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LAWS RELATING TO SEX MORALITY IN NEW YORK CITY

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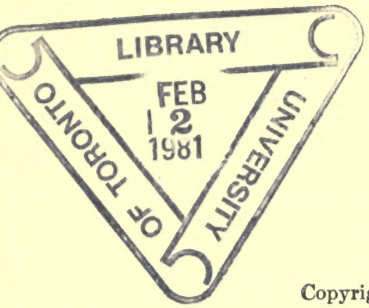
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INTRODUCTION

I

This Manual contains the Federal, State and local laws relating to sex morality in so far as they apply in the City of New York. It is intended primarily for the social worker, and the endeavor throughout has been to state the law in such a way that it can be readily understood and used by persons without legal training. It is hoped that the assembling under one cover of a body of law which is scattered throughout numberless statutes and decisions may be helpful also to lawyers and magistrates. The primary purpose, however, has never been lost sight of in its compilation; the Manual does not profess, nor indeed aim, to be a complete compendium, and everything has been rigidly excluded that does not bear more or less directly on the laws relating to the contributing causes and suppression of prostitution, the care of its victims, and the punishment of those persons who foster or benefit by its existence.

Some of the topics treated may perhaps seem remote from the principal subject, but experience in allied work justifies the belief that nothing has been included which is not material, and it is hoped that the desire to keep the Manual within the limits of a hand-book has resulted in no serious omissions.

The work is divided into six chapters. The first deals with the definition and punishment of sex offenses. The second chapter concerns itself principally with the laws regulating some of the social agencies that serve as recruiting stations for vice, such as dance halls and employment agencies; with weaknesses and diseases that are intimately connected with prostitution, such as intoxication, the drug habit, and venereal diseases; and with the laws and regulations relating to birth and marriage.

The third chapter is limited to the laws relating to children, in so far as these laws affect the general protection of their health and morals, their responsibility and punishment for moral lapses, and the punishment of their exploiters. The fourth and fifth chapters treat of the commitment, sentence, care, and rights of persons convicted of the offenses enumerated in the previous chapters, and the last chapter is chiefly intended to give elementary information with reference to courts and crimes generally.

To paraphrase a law necessarily involves interpretation, and therefore, the exact language of the statute has been used whenever feasible. However, the length, involved language, or unimportance of some of the statutes has made their quotation inadvisable, and they have been either condensed or summarized. Interpretation has been restricted to adjudicated cases, to which reference is made in all instances. References to foot-notes at the end of a paragraph indicate laws that are quoted; references in the body of a paragraph indicate those that are summarized.

Included in this Manual are all amendments made by Congress and the State Legislature during the year 1915, the Ordinances of the City of New York and the Sanitary Code amended to date and the reported decisions up to July 1st, 1915.

II

The boast of our law that it is the expression of the crystallized conscience of the people and keeps pace with that conscience, is nowhere less justified than in its treatment of prostitution and sex offenses generally. A partial justification for this may perhaps be found in the fact that at no time is there a general accord in the community on these questions. All communities and people find themselves quite in accord as to the seriousness of the crimes of murder and theft, but until recently, there was no law in the United States that made pandering a more serious crime than disorderly conduct, and in a few States pandering is still so

little defined as to make the crime "merely a breach of manners and to put it in the same class of offenses as selling a street-car transfer." The treatment of commercialized prostitution not only differs in each city, but changes in the same city under each different administration. The prohibition in the Decalogue against adultery is no less definite than that against murder, and yet, while the law against murder is uniform and constant, that against adultery has been diverse and unstable. In some States adultery is a felony, in others a misdemeanor; in some States both parties to the adultery are liable to punishment, and in others only the married person and in still others it is a crime only when the guilty party is a married woman. In New York, adultery did not become a criminal offense until 1907, and since then it has been practically impossible to obtain a conviction in the absence of unusually aggravating circumstances. Illicit sexual intercourse is a crime in only a very few States, and in other States only becomes such when it is attended by notorious lewdness and indecency, resulting in public scandal and nuisance. In rape the age of consent ranges throughout the United States from the common-law age of ten years to that fixed in New York at eighteen years.

The truth is, that the "new conscience toward an ancient evil" is itself only in a formative stage. The attempt toward an increased social control resulting from the recently awakened sense of social responsibility and from the theory now most widely accepted that commercialized vice can be suppressed or reduced to an irreducible minimum, has aroused but spasmodic bursts of public indignation and interest. The result is inevitable; the laws are ill considered, scattered, inconsistent, and chaotic. For example, the Inferior Criminal Court Act which became a law in 1910, and which itself changed the then existing laws relating to prostitution, was in turn amended in the parts affecting that subject by the Legislatures in 1912, 1913, 1914 and 1915, and the law relating to pandering, which was enacted in 1906, was amended so as considerably to extend its scope in 1910. A prostitute may now be convicted and committed under

a bewildering number of statutes, among others, the New York Consolidation Act, Code of Criminal Procedure, the Inferior Criminal Courts Act, State Charities Law, Tenement House Law, Penal Law, Chapter 439 of the Laws of 1912, and Chapter 353 of the Laws of 1886. Likewise, the keeper of a bawdy house makes herself liable to punishment under the Penal Law, Code of Criminal Procedure, Liquor Tax Law, Tenement House Law, Public Health Law, White Slave Traffic Act and the Immigration Laws.

New laws are needed to meet new conditions; for instance, it has recently become a not uncommon practice in New York City for men to ruin ignorant girls by persuading them that a legal marriage was entered into by the mere issuance of a marriage license. At present, if the girl is over eighteen, there is no law under which the man can be punished. The inconsistency of a system of law making it a felony for a man to take his mistress from New York City to Fall River on the Fall River Line (which is the law if the cases cited on page 49 are upheld), and leaving him guiltless of legal wrongdoing if he chooses instead to take her from New York City to Albany on the Albany Line, is too apparent to require comment. And so much traffic in women exists between cities in the same State that a law should be enacted in New York covering at least the transportation of women for commercial purposes from one city or county to another within the State.

The present law affecting hotels and rooming houses used for immoral purposes should be amended so as to make their suppression less difficult. At the 1914 conference of Charities and Corrections, it was suggested that this might be accomplished by requiring each male guest to personally enter in the register his correct name and post-office address, and to require an entry in the register of the number of the room occupied, the hour of his arrival and departure, and also a notation of whether the guest had baggage or not, and making the use of a false entry of any of these facts a misdemeanor, and providing that where the police have reason to believe the register does not correctly state the facts, or

that 75% of the guests are transient couples, the police should have the right to inspect the hotel at any time and to question all guests on their departure.

The relation between mental deficiency and prostitution has not as yet been definitely fixed, but enough has been learned in recent years to indicate that it is an important causative factor. The researches of the Massachusetts Commission for the investigation of the White Slave Traffic showed that 51% of the girls studied were mentally defective. Of 243 cases studied in 1914, at the Reformatory for Women at South Framingham, 49% were defective mentally, 16% were dull, and 47 of the remaining 84 with normal mentality showed other mental and nervous defects; only 15% of the whole appeared to be normal, mentally and physically, and at least 40% would be considered segregable types, needing permanent care in custodial institutions. In Bedford Reformatory, out of 193 girls, 29 8-10% of that number were at an "extremely conservative estimate" decidedly mentally defective, and out of 450 girls mentally examined at Waverly House in New York City, 173 (38.44%) were found to be so mentally weak that institutional care was indicated, both for the good of the individual girl and for the protection of society. Feeble-mindedness is thus apparently the largest single contributing cause to prostitution, and while in New York there is some provision for the commitment of feeble-minded girls, there is none for their adequate treatment or for their permanent custodial care.

It is to be hoped that the grouping together for the first time of these laws may lead to their careful and scientific study, and to the establishment of a fixed and definite legal policy toward prostitution, which will ultimately result in an adequate revision and codification of the laws affecting it, looking towards its prevention rather than its mere suppression.

Thanks are due to the New York Probation and Protective Association (at whose instance the preparation of this work was undertaken); to Miss Emily Cross; to Mr. James Bronson Reynolds, of the American Social

Hygiene Association; to Hon. Charles W. Appleton, City Magistrate, for incidental assistance and helpful suggestions; and, particularly, to Mr. Leon Mintz, of the New York Bar, for valuable aid rendered throughout the preparation of this work.

July 1st, 1915.

LAWS RELATING TO SEX MORALITY IN NEW YORK CITY

TABLE OF ABBREVIATIONS

A. D.	Appellate Division Reports
Aff'd	Affirmed
Barb.	Barbour's Supreme Court Reports
B. H. R.	Board of Health Rules
Chap.	Chapter
Charter	Charter of the City of New York
C. O.	Code of Ordinances of City of New York
Civ. P.	N. Y. Code of Civil Procedure
Crim. P.	Code of Criminal Procedure
C. L.	County Law
Denio	Denio's Common Law Reports
D. R. L.	Domestic Relations Law
Fed.	Federal Reporter
G. Const. L.	General Construction Law
G. B. L.	General Business Law
G. C. L.	General City Law
G. M. L.	General Municipal Law
Hun	Hun's Superior Court Reports
Hill	Hill's Common Law Reports
I. C. C. A.	Inferior Criminal Courts Act
I. L.	Insanity Law
John.	Johnson's Common Law Reports
L.	Laws
L. L.	Labor Law
L. T. L.	Liquor Tax Law
Misc.	Miscellaneous Reports
N. Y. Cr.	New York Criminal Reports
N. Y.	New York Court of Appeals Reports
N. Y. Supp.	New York Supplement Reports
Park.	Parker's Criminal Reports
P. L.	Penal Law
P. D. R.	Police Department Rules of N. Y. C.
Poor L.	Poor Law
Prison L.	Prison Law
P. H. L.	Public Health Law
Rev'd.	Reversed
S. C.	Sanitary Code of the City of New York
S. C. L.	State Charities Law
Stat. L.	United States Statute at Large
T. H. L.	Tenement House Law
U. S. P. L.	United States Penal Laws
U. S. R. S.	United States Revised Statutes
U. S.	United States Supreme Court Reports
Wend.	Wendell's Common Law Reports

LAWS RELATING TO SEX MORALITY IN NEW YORK CITY

CHAPTER I

SEX OFFENSES

Abduction.

The offense of abduction is the taking of a female for the purpose of prostitution, marriage, concubinage, or sexual intercourse.

The New York statute relating thereto is as follows:

A person who:

1. Takes, receives, employs, harbors or uses, or causes or procures to be taken, received, employed or harbored or used, a female under the age of eighteen years, for the purpose of prostitution; or, not being her husband, for the purpose of sexual intercourse; or, without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage; or,

2. Inveigles or entices an unmarried female, of previous chaste character, into a house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution or sexual intercourse; or,

3. Takes or detains a female unlawfully against her will, with the intent to compel her, by force, menace or duress, to marry him, or to marry any other person, or to be defiled; or,

4. Being parent, guardian or other person having legal charge of the person of a female under the age of eighteen years, consents to her taking or detaining by any person for the purpose of prostitution or sexual intercourse;

Is guilty of abduction and punishable by imprisonment for not more than ten years, or by a fine of not more than one thousand dollars, or by both.[1]

The fact that the defendant does not know the girl is under eighteen years is immaterial,[2] as is the fact whether she con-

[1] P. L. 70.

[2] People v. Stott, 4 N. Y. Cr. 306; aff'd, 5 N. Y. Cr. 61.

sents or not.[3] If the female is under eighteen it is sufficient to convict if there be either a "taking" for the purposes of prostitution,[4] or a "receiving" for that purpose,[5] but mere seduction does not amount to a "taking" within the act.[6]

It is not necessary that there be fraud, force or deception to constitute a "taking." Request, advice or persuasion is sufficient.[7]

It is immaterial when the female is under eighteen whether there be sexual intercourse or not, the crime is independent thereof.[8]

A hotel clerk is guilty of receiving and harboring under this act if he provides a room for purposes of sexual intercourse for a man and girl under eighteen, who register as man and wife; it is not necessary to guilt that the intercourse result, although the consummation is evidence of the purpose.[9]

Enticing a girl over eighteen, previously chaste, to the side of an unfrequented roadside at night for the purpose of a single act of intercourse does not constitute abduction.[10]

To sustain a conviction where the female abducted is over eighteen it must be shown that she was actually chaste,[11] her public reputation for chastity is insufficient.[12] If she is under eighteen her previous unchaste character is immaterial.[13]

The forcible detention of a girl who innocently enters a house of prostitution in search of employment as a servant, constitutes a "taking" under subdivision 3 of the act.[14]

No conviction can be had for abduction or compulsory marriage, upon the testimony of the female abducted or compelled, unsupported by other evidence.[15]

It is not necessary that the corroborating evidence should be such as to exclude every hypothesis except the guilt of the defendant.[16]

The complainant's evidence may be corroborated by proof of suspicious acts and false statements of defendant.[17]

3 People v. Seeley, 37 Hun 190; aff'd, 101 N. Y. 642.

4 People v. Plath, 100 N. Y. 590.

5 People v. Smith, 114 A. D. 513.

6 People v. Parshall, 6 Park. 129.

7 People v. Smith, 114 A. D. 513; People v. Seely, supra.

8 People v. Stott, supra.

9 People v. Deckenbrock, 157 A. D. 379; aff'd, 209 N. Y. 604.

10 People ex rel Howey v. Warden, 207 N. Y. 354.

11 Kenyon v. People, 26 N. Y. 203.

12 Kaufman v. People, 11 Hun 82.

13 People v. Stott, supra.

14 Schnicker v. People, 88 N. Y. 192.

15 P. L. 71.

16 People v. Elliot, 106 N. Y. 288.

17 People v. Wah Lee Mon, 13 N. Y. Supp. 767.

The "taking" is not corroborated by the fact that an employee in the house of prostitution saw the accused and the complainant together.[18]

The testimony of the complainant may be corroborated by that of another female abducted at the same time.[19]

Corroboration may be had by testimony of an accomplice of the accused.[20]

A physical examination of the female relied on as evidence must be made within a reasonable time; for example, it has been held that evidence of a physician that forcible penetration had been accomplished within a week is admissible,[21] while evidence of a physician's examination twelve days after the alleged offense, has been held insufficient corroboration.[22]

A school record as to the female's age is admissible if the teacher is unable to remember the fact,[23] but an entry in the family Bible disclosing the age is inadmissible if complainant's father is living.[24]

A ship's manifest specifying the age of the complainant is inadmissible.[25]

On the question of age, the jury may consider the complainant's appearance and dress, and the failure of the prosecution to produce a certificate of age in the possession of one of its witnesses.[26]

See also generally as to right of court and jury to determine child's age by personal inspection, P. L. 817, at page 82.

In connection with abduction the provisions relating to kidnapping may be quoted.

A person is guilty of kidnapping who wilfully:

1. Seizes, confines, inveigles, or kidnaps another, with intent to cause him, without authority of law, to be secretly confined or imprisoned within this state, or to be sent out of the state, or to be sold as a slave, or in any way held to service or kept or detained against his will; or,

2. Leads, takes, entices away, or detains a child under the age of sixteen years, with intent to keep or conceal it from its parents, guardian, or other person having the lawful care or control thereof, or to extort or obtain money or reward for the return or disposition of the child, or with intent to steal any article about or on the person of the child; or,

3. Abducts, entices or by force or fraud unlawfully takes, or carries away another at or from a place without the state, or pro-

18 People v. Miller, 70 A. D. 592.

19 People v. Panyko, 71 A. D. 324; aff'd, 171 N. Y. 669.

20 People v. Powell, 4 N. Y. Cr. 585.

21 People v. Stott, supra.

22 People v. Swasey, 77 A. D. 185.

23 People v. Brow, 90 Hun 509.

24 People v. Sheppard, 44 Hun 565.

25 People v. Wolf, 107 A. D. 449; rev'd. on another point 183 N. Y. 464.

26 People v. Ragone, 54 A. D. 498.

cures, advises, aids or abets such an abduction, enticing, taking, or carrying away, and afterwards sends, brings, has or keeps such person, or causes him to be kept or secreted within this state. . . . Kidnapping is a felony and is punishable, if a parent of the person kidnapped, by imprisonment for not more than ten years, and, if a person other than a parent of the person kidnapped, by imprisonment for not less than ten years nor more than fifty years.[27]

The following persons are liable to punishment within this state. . . .

A person who, being out of this state, abducts or kidnaps by force or fraud, any person contrary to the laws of the place where such act is committed, and brings, sends, or conveys such person within the limits of this state, and is afterwards found therein.[28]

Abortion.

A person is guilty of abortion,

. . . Who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve the life of the woman, or of the child with which she is pregnant, either:

1. Prescribes, supplies, or administers to a woman, whether pregnant or not, or advises or causes a woman to take any medicine, drug, or substance; or,

2. Uses, or causes to be used, any instrument or other means.[1] . . .

Abortion is punishable by imprisonment in a state prison for not more than four years, or in a county jail for not more than one year.

Mere advice, not followed by any action on the part of the woman, does not constitute abortion,[2] but one who counsels, induces and procures its commission is guilty, although absent at the time.[3]

It seems that the woman upon whose body the abortion is committed cannot be an accomplice and the provision of the Code prohibiting a conviction upon the testimony of an accomplice does not apply to her evidence.[4]

A person may be guilty of attempting to commit the crime of abortion without proof that the person on whom the attempt was made, was pregnant.[5]

A pregnant woman, who takes any medicine, drug, or substance, or uses or submits to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life, or that of the child whereof she is pregnant, is punishable by imprison-

27 P. L. 1250.
28 P. L. 1930.
1 P. L. 80.
2 People v. Phelps, 133 N. Y. 267.
3 People v. Bliven, 112 N. Y. 79.
4 People v. Vedder, 98 N. Y. 630.
5 People v. Papp, 165 A. D. 971.

ment for not less than one year, nor more than four years.[6]

A person who manufactures, gives or sells an instrument, a medicine or drug, or any other substance, with intent that the same may be unlawfully used in procuring the miscarriage of a woman, is guilty of a felony.[7]

. . . The wilful killing of an unborn quick child, by any injury committed upon the person of the mother of such child, is manslaughter in the first degree.

A person who provides, supplies, or administers to a woman, whether pregnant or not, or who prescribes for, or advises or procures a woman to take any medicine, drug, or substance, or who uses or employs, or causes to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, in case the death of the woman, or of any quick child of which she is pregnant is thereby produced, is guilty of manslaughter in the first degree.[8]

. . . A woman quick with child, who takes or uses, or submits to the use of any drug, medicine, or substance, or any instrument or other means with intent to produce her own miscarriage, unless the same is necessary to preserve her own life, or that of the child whereof she is pregnant, if the death of such child is thereby produced, is guilty of manslaughter in the second degree.[9]

Manslaughter is punishable as follows: First degree not exceeding twenty years;[10] second degree not exceeding fifteen years or fine of not more than one thousand dollars or both.[11]

See also Indecency, page 31, and Nuisance, page 37.

Adultery.

Adultery is the sexual intercourse of two persons, either of whom is married to a third person.[1]

A person who commits adultery is guilty of a misdemeanor.[2]

A person convicted of a violation of this article is punishable by imprisonment in a penitentiary or county jail for not more than six months or by a fine of not more than two hundred and fifty dollars, or by both.[3]

A conviction under this article can not be had on the uncorroborated testimony of the person with whom the offense is charged to have been committed.[4]

Convictions under these sections are rare and prison penalties are still rarer, unless unusually aggravating circumstances are proven.

6 P. L. 81.
7 P. L. 82.
8 P. L. 1050.
9 P. L. 1052.
10 P. L. 1051.
11 P. L. 1053.
1 P. L. 100.
2 P. L. 101.
3 P. L. 102.
4 P. L. 103.

A female convicted of adultery may be committed under S. C. L. 226 (page 15) to a house of refuge.[5]

Assault.

An assault is an attempt or offer to do unlawful bodily hurt or injury to another.

The New York statutes define three degrees of assault, as follows:

A person who, with an intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, or of another:

1. Assaults another with a loaded fire arm, or any other deadly weapon, or by any other means or force likely to produce death; or,

2. Administers to or causes to be administered to or taken by another, poison, or any other destructive or noxious thing, so as to endanger the life of such other,

Is guilty of assault in the first degree.[1]

A person who, under circumstances not amounting to the crime specified in section 240 [the last paragraph],

1. With intent to injure, unlawfully administers to, or causes to be administered to, or taken by another, poison, or any other destructive or noxious thing, or any drug or medicine the use of which is dangerous to life or health; or,

2. With intent thereby to enable or assist himself or any other person to commit any crime, administers or causes to be administered to, or taken by another, chloroform, ether, laudanum, or any other intoxicating narcotic or anesthetic agent; or,

3. Wilfully and wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or,

4. Wilfully and wrongfully assaults another by the use of a weapon, or other instrument or thing likely to produce grievous bodily harm; or,

5. Assaults another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself, or of any other person,

Is guilty of assault in the second degree.[2]

An attempt at sexual intercourse without violence, abandoned as soon as female refused and resisted, does not constitute assault with attempt to commit rape; such an assault is accomplished when there is a preconceived intent to have sexual intercourse together with the use of actual force.[3]

Where the prisoner decoyed a girl under ten years into a

5 People ex rel Sheldon v. Curtin, 152 A. D. 364.

1 P. L. 240.

2 P. L. 242.

3 People v. Clark, 3 N. Y. Cr. 280.

building with the purpose of ravishing her, and was there detected indecently exposed, although there was no evidence that he had touched her, he was properly convicted of assault with intent to commit a rape.[4]

A person who commits an assault, or an assault and battery, not such as is specified in sections 240 and 242, is guilty of assault in the third degree.[5]

While the expressed assent of a child under the age of ten years is a defense to a charge of indecent assault,[6] there need not be positive resistance on her part; it is enough that the offense was committed without her actual consent.[7]

The punishment of assault in the first degree [8] is imprisonment for a term not exceeding ten years; in the second degree [9] for a term not exceeding five years or a fine not exceeding one thousand dollars or both; in the third degree [10] for a term not exceeding one year or a fine not exceeding five hundred dollars or both.

See also Rape, page 42.

Bigamy.

A person who, having a husband or wife living, marries another person, is guilty of bigamy and is punishable by imprisonment in a penitentiary or state prison for not more than five years.[1]

Bigamy is not punishable in this state unless the second marriage took place therein.[2]

The fact that the husband in good faith thought he had been divorced from his first wife does not constitute a defense.[3] But the first marriage must be valid in accordance with the laws of the state where it was contracted; [4] the mere confession of the defendant is not sufficient proof of the first marriage; there must be proof of the marriage in fact.[5]

The last section [P. L. 340] does not extend:

1. To a person whose former husband or wife, has been absent for five years successively then last past, without being known

4 Hays v. People, 1 Hill 351.
5 P. L. 244.
6 People v. Persons, 2 N. Y. Cr. 114.
7 People ex rel Engel v. Special Sessions, 18 Hun 330.
8 P. L. 241.
9 P. L. 243.
10 P. L. 245.

1 P. L. 340.
2 People v. Mosher, 2 Park. 195.
3 People v. Weed, 29 Hun 628; aff'd, 96 N. Y. 625.
4 People v. Crawford, 62 Hun 160; aff'd, 133 N. Y. 535.
5 People v. Humphrey, 7 John 314.

to him or her within that time to be living, and believed by him or her to be dead; or,

2. To a person whose former marriage has been pronounced void, or annulled, or dissolved, by the judgment of a court of competent jurisdiction, for a cause other than his or her adultery; or,

3. To a person who, being divorced for his or her adultery, may be permitted to marry again under the provisions of section eight of the domestic relations law; or,

4. To a person whose former husband or wife has been sentenced to imprisonment for life.[6]

An indictment for bigamy may be found in the county in which the defendant is arrested, and the like proceedings, including the trial, judgment and conviction, may be had in that county, as if the offense were committed therein.[7]

A person who knowingly enters into a marriage with another, which is prohibited to the latter by the foregoing provisions of this article is punishable by imprisonment in a penitentiary or state prison, for not more than five years, or by a fine of not more than $1000, or both.[8]

See also Marriage, page 58.

Crimes Against Nature.

These crimes, which include sodomy, bestiality, and buggery, are the carnal intercourse against the order of nature by woman with woman, or man with man, or in the same unnatural way with woman; or by man or woman in any manner with an animal.

The New York statute is as follows:

A person who carnally knows in any manner any animal or bird; or carnally knows any male or female person by the anus or by or with the mouth; or voluntarily submits to such carnal knowledge; or attempts sexual intercourse with a dead body is guilty of sodomy and is punishable with imprisonment for not more than twenty years.[1]

Any sexual penetration, however slight, is sufficient to complete the crime specified in the last section.[2]

Disorderly Conduct and Prostitution.

"Disorderly conduct tending to a breach of the peace" is a statutory offence which is neither a misdemeanor nor a felony but a proceeding of a criminal nature, and is distinguishable and different from those acts which constitute one a disorderly person or vagrant. In common parlance, a person guilty of

6 P. L. 341.
7 P. L. 342.
8 P. L. 343.

1 P. L. 690.
2 P. L. 691.

disorderly conduct may be said to be a disorderly person, but under the law as it exists in New York City the offences are separate and distinct; the latter offence being defined in Crim. P. 899 (page 27) and the former in sections 1458 and 1459 of Chapter 410, Laws of 1882, which are as follows:

Every person in said [i.e., New York] city and county shall be deemed guilty of disorderly conduct that tends to a breach of the peace, who shall in any thoroughfare or public place in said city and county commit any of the following offenses, that is to say: . . .

2. Every common prostitute or nightwalker loitering or being in any thoroughfare or public place for the purpose of prostitution, or solicitation, to the annoyance of the inhabitants or passers-by.

3. Every person who shall use any threatening, abusive, or insulting behavior with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned.[1]

Whenever it shall appear, on oath of a credible witness before any police justice in said city and county, that any person in said city and county has been guilty of any such disorderly conduct as in the opinion of such magistrate tends to a breach of the peace, the said magistrate may cause the person so complained of to be brought before him to answer the said charge.[2]

This act is still in force and a magistrate has the power to commit females convicted thereunder to Bedford Reformatory under section 1458 pursuant to the provisions of I. C. C. A. 89,[3] or may make such other disposition of the case as is provided for under I. C. C. A. and S. C. L. (pages 11 to 16).

The word "such" in section 1459 is correlative with the word "as" and does not relate to such acts as are enumerated in section 1458, but the section means that a person who commits such acts as tend to a breach of the peace in the magistrate's opinion may be held by said magistrate to answer such charge.[4] This case, however, is criticized in People v. Superintendent.[5]

Whenever any person other than a child under the age of sixteen years is convicted in the city of public intoxication, disorderly conduct that tends to a breach of the peace, or vagrancy, other than is provided in sections 88-a and 89 of this act, the magistrate, before whom such conviction is had, shall, subject to the provisions of section 92 of this act [see

1 L. 1882, Chap. 410, Sec. 1458.
2 L. 1882, Chap. 410, Sec. 1459. For disorderly conduct in parks see C. O. Chap. 17, § 17, 72.
3 People v. Davis, 143 A. D. 579.
4 People v. Mansi, 129 A. D. 386.
5 65 Misc. 653.

under commitment and sentence, p. 88], impose upon the person so convicted one or other of the penalties herein provided:

1. The magistrate may commit such person, if a female, for not exceeding one year, in the boroughs of Manhattan and the Bronx, to the Roman Catholic House of the Good Shepherd, the Protestant Episcopal House of Mercy, or the New York Magdalen Benevolent Society; in the borough of Brooklyn, to the Wayside Home, House of the Good Shepherd, or the Bethesda Home, and in the other boroughs to one of the above-named institutions or to any other similar institution for women incorporated to carry on reformatory or rescue work in the city of New York.

2. The magistrate may commit such female for the term of three years to the state farm for women under the provisions of chapter 467, Laws of 1908.

3. The magistrate may commit such person, whether male or female, in the boroughs of Manhattan, Brooklyn, Queens, and the Bronx, to the workhouse on Blackwell's Island, and in the other borough of said city to the county jail, for a definite term not exceeding six months.

4. The magistrate may impose a fine not exceeding ten dollars. Upon the payment of the fine imposed, the person so convicted shall be forthwith discharged from custody. If, in the judgment of the magistrate, the person so convicted may be relied upon to pay the fine imposed within a reasonable time, the person so convicted may be conditionally released, and shall be furnished by the clerk of the court with a written certificate that he is released upon condition that the fine imposed be paid into the court within a time to be named in the certificate. If the fine be not paid within such time, the magistrate sitting in the magistrate's court in which such conviction was had, shall issue a warrant for the arrest of such person, and shall commit him pursuant to the provisions of this section as to commitment in case of the nonpayment of a fine imposed, in the same manner as if he had not theretofore been conditionally released. If the fine imposed be not paid forthwith, the person so fined shall, if he be not conditionally released as hereinabove provided, be committed, in the boroughs of Manhattan, Brooklyn, Queens, and the Bronx, to a city prison, and in the other borough of said city, to the county jail of the county in which he shall have been convicted, for not exceeding ten days, each day of imprisonment to be taken as a liquidation of one dollar of the fine.

5. The magistrate may require any person so convicted to give sufficient surety or sureties for his good behavior for a period of time, to be recited in the commitment, of not more than six months. In default of giving such surety forthwith, the court or magistrate shall commit such person, in the boroughs of Manhattan, Brooklyn, Queens, and the Bronx, to a city prison, to be thereafter transferred to and detained in the workhouse, and in the other borough of said city to the county jail of the county in which he shall have been convicted, or to said

workhouse, to be there detained until such surety is furnished, or until the expiration of the period of time fixed by said commitment as aforesaid. Nothing in this section contained shall be so construed as to prevent any magistrate from committing any person so convicted to any state institution to which, and for any term longer than six months for which, such magistrate may now be authorized to commit by law.

6. The magistrate may suspend sentence or place such person upon probation.

7. In addition to such other punishments as are provided in this section, a city magistrate may commit a person convicted of vagrancy, either on his own confession or on evidence taken before such magistrate, to the penitentiary of the city of New York for a definite period not to exceed six months. If such person be aged, decrepit, infirm or apparently unable to perform manual labor, the city magistrate may commit such infirm, decrepit or disabled person to the New York City Home for the Aged and Infirm, for a definite period not to exceed six months.[6]

Whenever any female, other than a child under the age of sixteen years, is convicted in the city of New York of being a common prostitute, of soliciting on public streets or places for purposes of prostitution, of frequenting disorderly houses or houses of prostitution, or of vagrancy under subdivisions 3 or 4 of section 887 of the code of criminal procedure [see page 28] or under subdivision 2 of section 1458 of chapter 410 of Laws of 1882 as amended, known as the consolidation act [see page 11] or under section 150 of chapter 99, Laws of 1909 as amended, known as the tenement house law [see page 19], the magistrate before whom such conviction is had, shall, subject to the provisions of section 92 of this act, impose upon the person so convicted one or other of the penalties herein provided:

1. The magistrate may commit such female for the term of three years, in the boroughs of Manhattan and the Bronx, to the Roman Catholic House of the Good Shepherd, the Protestant Episcopal House of Mercy, or the New York Magdalen Benevolent Society; in the borough of Brooklyn, to the Wayside Home, House of the Good Shepherd, or the Bethesda Home, and in the other boroughs to one of the above-named institutions or to any other similar institution for women incorporated to carry on reformatory or rescue work in the city of New York.

2. The magistrate may commit such female for the term of three years to the State Reformatory for Women at Bedford, pursuant to the provisions of section 226 of the state charities law, chapter 55 of the consolidated laws as amended [see page 15] to be there confined as provided by such law and by any other statute relating to such reformatory except as otherwise provided in this section and in section 92 of this act.

[6] I. C. C. A. 88. See People ex rel Weiss v. N. Y. Magdalen Ben. Soc., 136 N. Y. S. 616; People ex rel Kelly v. House of Good Shepherd, 77 Misc. 482.

3. The magistrate may commit such female for the term of three years to the State Farm for Women under the provisions of chapter 467, Laws of 1908.

4. The magistrate may commit such female for a definite term not exceeding six months in the boroughs of Manhattan, Brooklyn, Queens, and the Bronx to the workhouse on Blackwell's Island, and in the other borough of said city to the county jail.

5. The magistrate may, except in the case of females convicted under section 150 of chapter 99, Laws of 1909, as amended, known as the tenement house law [see p. 19], suspend sentence or place such female upon probation.[7]

Whenever any person is convicted in the city of public intoxication or vagrancy, or is convicted under the provisions of section 89 of this act, it shall be the duty of the chief city magistrate within twenty-four hours after such conviction, to ascertain from the records within his charge whether such person has been previously convicted. It shall also be his duty, after any person is so convicted, within twenty-four hours, to make an examination and take the identification of any such person according to the system known as the "finger print system." It shall also be his duty within such twenty-four hours to transmit to the magistrate convicting such person a written report showing the name, aliases, and sex of any such person and describing the finger prints or other signs whereby such person may be identified, the date of all previous convictions, the offense for which such person was convicted, the sentence imposed in each case and the name of the magistrate by whom such convictions were made, and such other information as the chief city magistrate may determine. Such report shall in each case be attached to the complaint and shall be filed as part of the court records. The system of identification and reports herein provided for may at any time be extended to such courts and to such other classes of offenses and offenders as the board of magistrates in each division may determine.[8]

In the night court for women, and such other courts as the boards of magistrates may designate, there shall be established and maintained the method of identification of prisoners known as the finger-print system. The finger-prints of all females convicted for any of the offenses enumerated in section 89 of this act shall be taken by officers or employees of the police department detailed for that purpose or by such officers or employees as may be designated by the chief city magistrate. One impression or duplicate shall be classified and preserved in the court where the same was made; a second shall be promptly delivered to and classified and preserved in the office of the chief clerk of the division, and the third shall be forthwith delivered to the police commissioner. The board of city magistrates of each division is empowered to make and from time to time to amend rules and regulations prescribing the courts in

7 I. C. C. A. 89. 8 I. C. C. A. 90.

which females arrested after the closing of the night court for any of the offenses enumerated in section 89 of this act shall be arraigned and the court where such female shall be tried, and to provide for their detention, release or parole pending trial.[9]

Persons convicted of maintaining disorderly houses under P. L. 1146 (page 24) shall also be identified as provided above.

1. A female between the ages of sixteen and thirty years, or any female of any age committed under the provisions of section 89 of chapter 659, L. 1910 [I. C. C. A. 89, page 13], as amended, convicted by any court or magistrate of petit larceny, vagrancy under subdivision 3 or 4 of section 887 of the code of criminal procedure [page 28], habitual drunkenness, of being a common prostitute, or frequenting disorderly houses or houses of prostitution, or of a misdemeanor, and who is not insane, or mentally or physically incapable of being substantially benefited by the discipline of . . . such institution may be sentenced and committed to the . . . New York State Reformatory for Women at Bedford, to be there confined under the provisions of law relating to such institution. Such commitments shall not be for a definite term, but any such female may be paroled or discharged at any time after her commitment by the board of managers of such institution, but shall not in any case be detained longer than three years. Such commitments . . . shall be . . . to the New York State Reformatory for Women at Bedford, from the first and second . . . judicial districts.

2. The board of managers of each such institution shall furnish the several county clerks of the state with suitable blanks for the commitment of women thereto. Such county clerks shall immediately notify the magistrates of their respective counties of the reception of such blanks and that upon application they will be furnished to them.

3. The magistrate committing a female pursuant to this section shall immediately notify the superintendent of the institution to which the commitment is made of the conviction of such female, and shall cause a record to be kept of the name, age, birthplace, occupation, previous commitments, if any, and for what offenses; the last place of residence of such female, and the particulars of the offense for which she is committed. A copy of such record shall be transmitted, with the warrant of commitment, to the superintendent of such institution, who shall cause the facts stated therein, and such other facts as may be directed by the board of managers, to be entered in a book of records.

4. Such magistrate shall, before committing any such female, inquire into and determine the age of such female at the time of commitment, and her age as so determined shall be stated in

[9] I. C. C. A. 78.

the warrant. The statement of the age of such female in such warrant shall be conclusive evidence as to such age, in any action to recover damages for her detention or imprisonment under such warrant, and shall be presumptive evidence thereof in any other inquiry, action or proceeding relating to such detention or imprisonment.[10]

1. Whenever any female over the age of twelve years shall be brought by the police or shall voluntarily come before any court or a committing magistrate in the city of New York, and it shall be proved to the satisfaction of such court or magistrate by the confession of such female, or by competent testimony, that such female (first) is found in a reputed house of prostitution or assignation; or in company with, or frequenting the company of thieves or prostitutes; or is found associating with vicious and dissolute persons; or is willfully disobedient to parent or guardian, and is in danger of becoming morally depraved; or (second) is a prostitute, or is of intemperate habits, and has not been an inmate of the penitentiary; or (third) is convicted of petit larceny and is over sixteen years of age and has not been an inmate of the penitentiary, such court or magistrate may judge that it is for the welfare of such female that she be placed in a reformatory, and may thereupon commit such female to one of the following reformatory institutions, namely, the Protestant Episcopal House of Mercy, New York, a Roman Catholic House of Good Shepherd in the city of New York, the Jewish Protectory and Aid Society, or the New York Magdalen Benevolent Society, which said institutions are hereby severally authorized to receive and hold females committed under this act.

2. It shall be the duty of each of such institutions which shall receive females coming within the description of the first class mentioned in the foregoing subdivision to keep them separate and apart from females coming within the descriptions of the second class mentioned. Whenever any of such institutions is unable for any reason to receive females, or any class of females, committed under this act, it shall be the duty of such institutions to forthwith notify the committing magistrates in the city of New York as to what class or classes of females can be received by such institution, and as to what class or classes cannot be received by such institution. Whenever it shall appear to the managers or trustees of any institution to which a female has been committed under this act that such female is not a proper or fit subject for their care, or that such institution has not suitable accommodation for such female, such institution may return such female to the committing magistrate with a statement in writing of the reasons for such return; and such magistrate may thereupon commit such female as a vagrant, pauper, or disorderly person.

3. Every commitment made under this act shall state the name and age of the female so committed, together with the

[10] S. C. L. 226.

cause of her commitment, and shall designate the institution to which she is committed, which institution shall, when practicable, be one which is conducted by persons of the same religious faith as such female, and such commitment shall also state the term of the commitment, which, if the female so committed is an adult, shall be three years; or, if such female is a minor, during her minority, unless sooner discharged by the trustees or managers of such institution, provided, however, that no commitment made under this act, which shall recite the facts upon which it is based, shall be deemed or held to be invalid by reason of any imperfection or defect in form.[11]

This act is still in force and has not been repealed by I. C. C. A.[12]

1. Whenever any female over the age of twelve years shall be brought by the police, or shall voluntarily come before a committing magistrate in the city of Brooklyn or any of the justices of peace of the county of Kings, and it shall be proved to the satisfaction of such magistrate by the confession of such female, or by competent testimony that such female, first, is found in a reputed house of prostitution or assignation, or in company with, or frequenting the company of thieves or prostitutes, or is found habitually associating with disorderly persons; or is willfully disobedient to parent or guardian, and is in danger of becoming therefrom and from vicious habits or associations criminal or disorderly; or, second, is a prostitute or is of intemperate habits, such magistrate may judge that it is for the welfare of such female that she be placed in a reformatory, and may thereupon commit such female to one of the following reformatory institutions, namely: the Wayside Home, three hundred and fifty-two Bridge Street, or the Roman Catholic House of Good Shepherd, at Rockaway and Hopkinson Avenues, in the borough of Brooklyn, or the Protestant Episcopal House of Mercy or the New York Magdalen Benevolent Society in the borough of Manhattan; which said institutions are hereby severally authorized to receive and hold females committed under this act, but until an examination and judgment shall be had, no persons shall be committed to the institutions mentioned in this act.

2. It shall be the duty of each of such institutions which shall receive females coming within description of the first class mentioned in the foregoing subdivision or who are of intemperate habits to keep them separate and apart from other females coming within the description of the second class mentioned. Whenever any of such institutions is unable for any reason to receive females, or any class of females, committed under this act it shall be the duty of such institution to forth-

11 L. 1886, Chap. 353, as amended by L. 1914, Chap. 445.

12 People v. Roman Catholic House of Good Shepherd, 77 Misc. 482; People v. N. Y. Magdalen Society, 136 N. Y. S. 617.

with notify the committing magistrates in the city of Brooklyn and the justices of peace of the county of Kings, as to what class or classes of females can be received by such institutions. Whenever it shall appear to the managers or trustees of any institution to which a female has been committed under this act that such female is not a proper or fit subject for their care, or that such institution has not suitable accommodation for such female, such institution may return such female to the committing magistrate, with a statement in writing of the reasons for such return, and such magistrate may thereupon commit such female as a vagrant, pauper, or disorderly person.

3. Every commitment made under this act shall state the name and age of the female so committed together with the cause of her commitment, and shall designate the institution to which she is committed, which institution shall, when practicable, be one which is conducted by persons of the same religious faith as such female; and such commitment shall also state the term of the commitment, which, if the female so committed is an adult, shall be six months, or if such female is a minor, during her minority, unless sooner discharged by the trustees or managers of such institution, or by a court upon satisfactory evidence of reasonable probability that such female will thereafter live at liberty without violating the law, provided, however, that no commitment made under this act, which shall not recite all the facts upon which it is based, shall be deemed or held to be invalid by reason of any such imperfection or defect in form. . . .[13]

A commitment under this chapter in the alternative, during minority or until discharged, is valid.[14]

The name of the New York Magdalen Benevolent Society has been changed to the New York Magdalen Home, and Chapter 66 of the Laws of 1915 provides that commitments may be made to the New York Magdalen Home although the statutes may refer to the New York Magdalen Benevolent Society.

PROSTITUTION IN TENEMENT HOUSES.

. . . No tenement house or any part thereof or the lot or premises thereof shall be used for the purpose of prostitution or assignation of any description. . . .[15]

A "tenement house" is any house or building, or portion thereof, which is either rented, leased, let or hired out, to be occupied, or is occupied, in whole or in part, as the home or residence of three families or more living independently of each other, and doing their cooking upon the premises, and includes apartment houses, flat houses and all other houses so occupied.[16]

13 L. 1892, Chap. 439, as amended by L. 1914, Chap. 213.
14 People v. Mother Superior, 62 Misc. 24.
15 T. H. L. 109.
16 T. H. L. 2.

. . . The owner of any tenement house or part thereof, or of any building or structure upon the same lot with a tenement house, or of the said lot, where any violation of this chapter or a nuisance exists, and any person who shall violate or assist in violating any provision of this chapter, or any notice or order of the department charged with its enforcement, shall also jointly and severally for each such violation and each such nuisance be subject to a civil penalty of fifty dollars. . . .[17]

A lessee is not liable under this section unless he had knowledge or intimation that the premises were or would be used for purposes of prostitution,[18] but an owner may be liable without reference to his knowledge or negligence, but in such a case there must be a condition of permanence, a single act of prostitution followed by an eviction is insufficient by itself.[19]

Every owner of a tenement house and every lessee of the whole house, or other person having control of a tenement house, shall file in the department charged with the enforcement of this chapter, a notice containing his name and address and also a description of the property, by street number or otherwise, as the case may be, in such manner as will enable the department charged with the enforcement of this chapter easily to find the same; and also the number of apartments in each house, the number of rooms in each apartment, and the number of families occupying the apartments. In case of a transfer of any tenement house, it shall be the duty of the grantee of said tenement house to file in the department charged with the enforcement of this chapter a notice of such transfer stating the name of the grantee, within thirty days after such transfer. In case of the devolution of said property by will, it shall be the duty of the executor and the devisee, if more than twenty-one years of age, and in case of the devolution of such property by inheritance without a will, it shall be the duty of the heirs or in case all of the heirs are under age, it shall be the duty of the guardians of such heirs, and in case said heirs have no guardians, it shall be the duty of the administrator of the deceased owner of said property to file in said department a notice, stating the death of the deceased owner, and the names of those who have succeeded to his interest in said property, within thirty days after the death of the decedent, in case he died intestate, and within thirty days after the probate of his will if he died testate.[20]

A person who:

1. Solicits another to enter a house of prostitution or a room in a tenement house or any part thereof for the purpose of prostitution; or,

2. Indecently exposes the private person for the purpose of prostitution or other indecency; or,

3. Commits prostitution in a tenement house or any part thereof; or,

4. Knowingly resides in a house of prostitution, or assigna-

17 T. H. L. 124.

18 Tenement House Dept. v. Whitney, 84 Misc. 54.

19 Tenement House Dept. v. McDevitt, 215 N. Y. 160.

20 T. H. L. 140.

tion or ill-fame of any description in a tenement house; or,

5. Keeps or maintains a house of prostitution, assignation or ill-fame of any description in a tenement house, shall be deemed a vagrant, and upon conviction thereof shall be committed to the county jail for a term not exceeding six months from the date of commitment, or, if the person is a female she may be placed upon probation except in the following cases: (a) when the offense was that of keeping or maintaining a house of prostitution, assignation or ill-fame in a tenement house, or (b) when the female has been convicted previously of any offense or crime. The procedure in such case shall be the same as that provided by law for other cases of vagrancy.[20]

It is not necessary for defendant to have actual sexual intercourse to commit prostitution within the meaning of this section; the act of offering her body to indiscriminate sexual intercourse for hire is sufficient to establish an act of prostitution.[21]

A tenement house shall be subject to a penalty of one thousand dollars, if it or any part of it shall be used for the purpose of a house of prostitution or assignation of any description, with the permission of the owner thereof, or his agent, and said penalty shall be a lien upon the house and the lot upon which the house is situated.[22]

If a tenement house, or any part thereof, shall be used for the purpose of a house of prostitution or assignation of any description with the permission of the lessee of the whole of said tenement house, or his agent, the lease shall be terminable at the election of the lessor. And the owner shall be entitled to recover possession of said tenement house by summary proceedings in the manner provided by title two of chapter seventeen of the code of civil procedure.[23]

A tenement house shall be deemed to have been used for the purpose specified in the last two sections with the permission of the owner, agent, and lessee thereof in the following cases:

1. If summary proceedings for the removal of the tenants of said tenement house, or of so much thereof as is unlawfully used, shall not have been commenced within five days after notice of such unlawful use, served by the department charged with the enforcement of this chapter in the manner prescribed by law for the service of notices and orders in relation to tenement houses; or having been commenced are not in good faith diligently prosecuted to final determination.

2. If there be two or more convictions in the same tenement house within a period of six months either under section 150 of this chapter or under section 1146 of the penal law [page 24].[24]

20 T. H. L. 150.

21 People v. Klein, General Sessions, June 10, 1913.

22 T. H. L. 151.

23 T. H. L. 152.

24 T. H. L. 153. Sub. 2 of this

In an action to establish a lien under this article or in any action or proceeding for a fine, penalty or other punishment for a violation of any of the provisions of this chapter, relating to prostitution, assignation or other indecency, proof of the ill-repute or the common fame of the premises which are the subject-matter of the action or proceeding or of the inmates thereof, or of those resorting thereto shall constitute presumptive evidence and it shall be presumed that such use was with the permission of the owner, agent and lessee.[25]

Said action shall be brought against the tenement house as defendant. Said house may be described in the title of the action by its street number, or in any other method sufficiently precise to secure identification. The property shall be described in the complaint. The plaintiff, except as hereinafter provided, shall be the department of health. In case any taxpayer of any city to which this chapter applies, shall request such department in writing to institute an action under this article against any tenement house specified in such request, and such department shall not institute such action within ten days after receiving such request, then any taxpayer of said city may institute and maintain such action against such tenement house in his own name, and in such case the court may in its discretion require security for costs.[26]

Said action shall be brought in the supreme court in the county in which the property is situated. At or before the commencement of the action the complaint shall be filed in the office of the clerk of the county, together with a notice of the pendency of the action, containing the names of the parties, the object of the action and a brief description of the property affected thereby. Said notice shall be immediately recorded by the clerk in accordance with the provisions of section 1672 of the code of civil procedure. The owner or lessee of said building, or both may appear in said action and answer or demur to the complaint and the subsequent proceedings in the action shall be the same as in other actions brought to establish a lien or incumbrance upon real property, and the action shall be entitled to a preference in the trial or hearing thereof.[27]

The judgment in such action, if in favor of the plaintiff, shall establish the penalty sued for as a lien upon said premises, subject only to taxes, assessments and water rates, and to such mortgage and mechanics' lien as may exist thereon prior to the filing of the notice of pendency of the action.[28]

ALIEN PROSTITUTES.

The Federal Immigration Law provides,

That the following classes of aliens shall be excluded from admission into the United States: . . . Prostitutes or women or girls coming into the United States for the purpose of prosti-

section has been declared unconstitutional in People ex rel Raymond v. Warden, 82 Misc. 525. This case, however, is a Special Term decision and the question is not to be considered as definitely settled. Its constitutionality was also passed on in Tenement House v. McDevitt, 215 N. Y. 160.

25 T. H. L. 154.

26 T. H. L. 155.

27 T. H. L. 156.

28 T. H. L. 157.

tution, or for any other immoral purpose; persons who are supported by or receive in whole or in part the proceeds of prostitution; persons who procure or attempt to bring in prostitutes or women or girls for the purpose of prostitution or for any other immoral purpose.[29]

That the importation into the United States of any alien for the purpose of prostitution or for any other immoral purpose is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import into the United States, any alien for the purpose of prostitution or for any other immoral purpose or whoever shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, or whoever shall keep, maintain, control, support, employ or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, in pursuance of such illegal importation, any alien, shall in every such case, be deemed guilty of a felony, and on conviction thereof, be imprisoned for not more than ten years and pay a fine of not more than five thousand dollars.

Jurisdiction for the trial and punishment of the felonies hereinbefore set forth shall be in any district to or into which said alien is brought in pursuance of said importation by the person or persons accused, or in any district in which a violation of any of the foregoing provisions of this section occur. Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practising prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; or who is employed by, in, or in connection with any house of prostitution, or amusement or dance hall or other place of amusement or resort habitually frequented by prostitutes or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States, and shall be deported in the manner provided by sections 20 and 21 of this act.

That any alien who shall, after he has been debarred or deported in pursuance of the provisions of this section, attempt thereafter to return to or enter the United States, shall be deemed guilty of a misdemeanor, and shall be imprisoned for not more than two years. Any alien who shall be convicted under any of the provisions of this section shall, at the expiration of his sentence, be taken into custody and returned to the country whence he came, or of which he is a subject or a citizen, in the manner provided in sections twenty and twenty-one of this act.

In all prosecutions under this section, the testimony of a husband or wife shall be admissible and competent evidence against a wife or husband.[30]

[29] 36 Stat. L. 263; 2.

[30] 36 Stat. L. 264; 3.

Under this act any alien woman practicing prostitution in United States can be deported regardless of her previous conduct or of the time of her entry into the United States.[31]

The venue must be laid in the district in which is situated the port of entry,[32] and cannot be laid in another district to which the alien thereafter went for the purpose of prostitution.[33]

Mere unlawful cohabitation with an alien woman imported for immoral purposes is not a violation of the section prohibiting the holding of alien woman for immoral purposes.[34]

An alien may be deported for importing a woman into the United States for purposes of prostitution without having been convicted of the charge of importing,[35] but this applies to alien immigrants and not to alien residents.[36]

Importing a woman into the United States for the purpose of living with her as his mistress is a violation of this section.[37]

An alien employed as a cook in a house of prostitution is within the provisions of this act and should be deported.[38]

An alien who was excluded for attempting to bring in a woman for purposes of concubinage and who returned to United States later and was admitted, held to have entered in violation of law and to be subject to deportation, even though he was domiciled in United States and had applied for his first papers.[39]

An alien may be deported, if being domiciled within the United States, he rents property to be used for a house of prostitution and assists, protects and promises to protect prostitutes from arrest and has been found receiving, sharing in and deriving benefit from their earnings.[40]

Disorderly Houses.

The terms "reputed house of prostitution or assignation," "house of prostitution," "house of ill-fame or assignation," "disorderly house," include all premises which by common fame or report are used for purposes of prostitution or assignation.[1]

31 Bugajewitz v. Adams, 228 U. S. 585.

32 U. S. v. Krsteff, 185 Fed. 201.

33 U. S. v. Lavoie, 182 Fed. 943.

34 U. S. v. Krsteff, supra.

35 Ex parte Pouliot, 196 Fed. 437.

36 U. S. v. Suekichi, 199 Fed. 750.

37 U. S. v. Bitty, 208 U. S. 393.

38 Ex parte Loo Shew Ung, 210 Fed. 990.

39 U. S. v. Uhl, 211 Fed. 628.

40 Ex parte Hidekuni Iwata, 219 Fed. 610.

1 P. L. 3; Subd. 9.

The Penal Law provides that:

Whosoever shall keep or maintain a house of ill-fame or assignation of any description or a place for the encouragement or practice by persons of lewdness, fornication, unlawful sexual intercourse or for any other indecent or disorderly act or obscene purpose therein or any place of public resort at which the decency, peace or comfort of a neighborhood is disturbed shall be guilty of a misdemeanor.

When the lessee, proprietor, or keeper of a disorderly house or other building or any other person is convicted under this section, the lease or contract for letting the premises or the part thereof in which such violation occurred shall, at the option of the owner, agent or lessor, become void and the owner, agent or lessor may have the like remedy to recover the possession as against a tenant holding over after the expiration of his term.

Whosoever as owner, agent or lessor shall agree to lease or rent or contract for letting any building or part thereof knowing or with good reason to know, that it is intended to be used for any of the uses or purposes herein prohibited or whosoever as owner, agent or lessor knowingly or with good reason to know permits any house or room or other part of any building or premises of which he may be the owner, agent or lessor to be used in whole or in part for any of the uses or purposes herein prohibited, shall be guilty of a misdemeanor.

Upon conviction of any person for a violation of the provisions of this section, the court before whom such conviction shall have been had, or the clerk of such court if there be a clerk, shall forthwith make and file in the office of the clerk of the county, in which said conviction shall have been had, a certified statement of said conviction and sentence, if any; and the clerk of said county shall immediately enter in the judgment docket book in said office the amount of the penalty or fine imposed, as a judgment against the person so convicted or sentenced.

All persons convicted under this section in all places to which chapter 659 of the Laws of 1910 applies shall be identified as provided for in section 78 of that chapter [page 14].[2]

The manager of a house of prostitution who engaged the voluntary inmates thereof, directed their activities and shared in their earnings, may be convicted of the crime of knowingly receiving the proceeds of prostitution under the provisions of subdivision 8 of section 2460 of the Penal Law (page 41). The fact that the title of that section refers to "compulsory prostitution" does not limit the statute to acts against the will and consent of the woman.[3]

2 P. L. 1146.

3 People v. Fegelli, 163 A. D. 576; aff'd, 214 N. Y. 670.

It is not an essential element of the offense of keeping a disorderly house that the public should be disturbed by noise; when the house of a person is the resort of prostitutes, plying their vocation with his knowledge, this constitutes a bawdy house.[4]

Proof that a restaurant maintained by the defendant was frequented by men addicted to drink; that they became intoxicated there; that quarrels were of common occurrence, and that indecent language used on the premises could be heard by those living in the neighborhood, establishes the crime of keeping a disorderly house.[5]

It must be affirmatively proven that the defendant is the owner, lessee or in control of the premises.[6]

Information by a policeman to a lessee that subtenants are common prostitutes is not sufficient to convict; it is necessary that the lessee have knowledge that subtenants have been convicted as common prostitutes or have knowledge of facts which would justify such a conviction.[7]

Evidence as to the conduct of the inmates, the general reputation of the house and the character of the inmates, is pertinent.[8]

In either of the following cases a tenant . . . of real property . . . may be removed therefrom. . . .

5. Where the demised premises or any part thereof, are used or occupied as a bawdy-house or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade of manufacture, or other illegal business.[9]

An owner or tenant, including a tenant of one or more rooms of an apartment house or tenement house, of any premises within two hundred feet from other demised real property used or occupied in whole or in part, as a bawdy-house, or house, or place of assignation for lewd persons, or for purposes of prostitution, or any domestic corporation organized for the suppression of vice, subject to or which submits to visitation by the state board of charities, and possesses a certificate from such board of such fact and of conformity with its regulations, may serve personally upon the owner or landlord of the premises, so used or occupied, or upon his agent, a written notice, requiring the owner or landlord to make an application for the removal of the person so using or occupying the same. If the owner or landlord, or his agent, does not make such application, within five days thereafter; or, having made it, does not in good faith diligently prosecute it; the person or corporation giving the notice may make an application for such removal on a petition stating the jurisdictional facts, which appli-

4 King v. People, 83 N. Y. 587.

5 People v. Jones, 129 A. D. 772.

6 People v. Shenk, 142 N. Y. Supp. 1081.

7 People v. Warden, 154 A. D. 256.

8 People v. Pasquale, 206 N. Y. 598.

9 Civ. P. 2231.

cation shall have the same effect, except as otherwise expressly prescribed in this title, as though the applicant were the owner or landlord of the premises, and shall have precedence over any similar application thereafter made by such owner or landlord or to one theretofore made by him and not prosecuted diligently and in good faith. Proof of the ill repute of the demised premises or of the inmates thereof or of those resorting thereto shall constitute presumptive evidence of the unlawful use of the demised premises, required to be stated in the petition for removal.[10]

It is hereby made the duty of the police department and force at all times of day and night, and the members of such force are hereby thereunto empowered, to especially preserve the public peace, prevent crime, detect and arrest offenders, . . . and inspect all places of public amusement, all places of business having excise or other licenses to carry on any business; all houses of ill-fame or prostitution, and houses where common prostitutes resort or reside.[11]

If any two or more householders shall report in writing, under their signature, to the police commissioner or to a deputy police commissioner, that there are good grounds (and stating the same) for believing any house, room or premises within the said city to be kept or used as a common gambling house, common gaming-room, or common gaming premises, for therein playing for wagers of money at any game of chance, or to be kept or used for lewd and obscene purposes or amusements, or the deposit or sale of lottery tickets or lottery policies, it shall be lawful for the police commissioner or either of his deputies or a deputy chief of police to authorize, in writing, any member or members of the police force to enter the same, who may forthwith arrest all persons there found offending against law, but none others; and seize all implements of gaming, or lottery tickets, or lottery policies, and convey any person so arrested before a magistrate, and bring the articles so seized to the office of the property clerk. It shall be the duty of the said police commissioner or deputy police commissioner or deputy chief of police to cause such arrested person to be rigorously prosecuted, and such articles seized to be destroyed, as the orders, rules and regulations of the police.[12]

This section has been declared unconstitutional and void in Phelps v. McAdoo, 47 Misc. 524, a special term case, but has not been tested by the higher courts. It is, however, extremely doubtful that the special term decision would not be followed.

If a captain knows, or has reasonable grounds to suspect, that a building or part thereof within his precinct is used in violation of the laws enacted for the protection of the public morals, he shall immediately notify his district inspector thereof. Liability notices will be served with the approval of the inspector of the district, in all cases where arrests have been made, for violation of these laws, and in cases where no arrests have been made, but reasonable grounds for suspicion exists.[13]

See also Disorderly Persons and Vagrants, page 27.

10 Civ. P. 2237.
11 Charter 315.
12 Charter 318.
13 P. D. R. 21.

Disorderly Persons and Vagrants.

DISORDERLY PERSONS.

Disorderly persons (as defined by Crim. P. 899) are not guilty of any crime, they are not felons or misdemeanants, but are punishable under a special proceeding of a criminal nature.[1] They are defined as follows:

1. Persons who actually abandon their wives or children, without adequate support, or leave them in danger of becoming a burden upon the public, or who neglect to provide for them according to their means;

2. Persons who threaten to run away, and leave their wives or children a burden upon the public;

3. Persons pretending to tell fortunes, or where lost or stolen goods may be found;

4. Keepers of bawdy houses or houses for the resort of prostitutes, drunkards, tipplers, gamesters, habitual criminals, or other disorderly persons;

5. Persons who have no visible profession or calling, by which to maintain themselves, but who do so, for the most part, by gaming; . . .

9. Habitual criminals within the provisions of this code.[2]

If the magistrate is satisfied that the defendant is a disorderly person, he may[3] require that the defendant give security approved by the magistrate (1) if he is convicted under subd. 1 or 2 that he will pay weekly for one year a reasonable sum to support his wife or children, or (2) if convicted under the other subdivisions that he will be of good behavior for one year.

If the security be given the defendant must be discharged; but if not[4] he must be convicted as a disorderly person. The magistrate must thereupon commit[5] the defendant to the county jail, or in the city of New York, to the city prison or penitentiary of that city, for not exceeding six months at hard labor, or until he gives the security prescribed in section 901; or, if the defendant be a person described in the first or second subdivision of section 899, the magistrate may require him while on probation to pay through the probation officer weekly a reasonable sum for the support of his wife or children.

The court may discharge a person so committed from imprisonment, either absolutely or on parole under a salaried probation officer, or upon his giving security as provided in section 901, or if he be a minor, may authorize in the city of New York, the commissioner of charities, to bind him out

1 People v. Fuerst, 13 Misc. 304.
2 Crim. P. 899.
3 Crim. P. 902.
4 Crim. P. 902.
5 Crim. P. 903.

in some lawful calling as a servant, apprentice, mariner or otherwise, until he be of age; or if he be of age, to contract for his service with any person, as a laborer, servant, apprentice, mariner or otherwise, for not exceeding one year. The binding out or contract, pursuant to this section, has the same effect as the indenture of an apprentice, with his own consent and that of his parents, and subjects the person bound out or contracted, to the same control of his master and of the county court of the county, as if he were bound as an apprentice.[6]

The court may also, in its discretion, order a person convicted as a disorderly person, to be kept in the county jail, or, in the city of New York, in the city prison or penitentiary of that city, for a term not exceeding six months at hard labor.[7]

Any person who shall by any offensive or disorderly act or language, annoy or interfere with any person in any place or with the passengers of any public stage, railroad car, ferry boat, or other public conveyance, or who shall disturb or offend the occupants of such stage, car, boat or conveyance, by any disorderly act, language or display, although such act, conduct or display may not amount to an assault or battery, shall be deemed guilty of a misdemeanor.[8]

Deliberately stepping in front of a woman, impeding her progress, jolting and pushing her as she leaves an elevator car constitutes disorderly conduct.[9] A conviction for public intoxication is not a bar to a prosecution under this section for disorderly conduct growing out of the same transaction.[10]

VAGRANTS.

The following persons are vagrants:

1. A person who, not having visible means to maintain himself, lives without employment;

2. A person who, being an habitual drunkard, abandons, neglects or refuses to aid in the support of his family;

3. A person who has contracted an infectious or other disease, in the practice of drunkenness or debauchery, requiring charitable aid to restore him to health;

4. A person (a) who offers to commit prostitution; or (b) who offers or offers to secure a female person for the purpose of prostitution, or for any other lewd or indecent act; or (c) who loiters in or near any thoroughfare or public or private place for the purpose of inducing, enticing or procuring another to commit lewdness, fornication, unlawful sexual intercourse or any other indecent act; or (d) who in any manner induces, en-

6 Crim. P. 910.
7 Crim. P. 911.
8 P. L. 720.
9 People v. Cohen, 136 N. Y. Supp. 163.
10 People v. Bevins, 74 Misc. 377.

Amendment 1919 vol attached.

tices or procures a person who is in any thoroughfare or public or private place, to commit any such acts; or (e) who is a common prostitute who has no lawful employment whereby to maintain herself; . . .[11]

If the magistrate be satisfied, from the confession of the person so brought before him, or by competent testimony, that he is a vagrant, he must convict him[12] and must[13] commit him for not exceeding six months at hard labor, to the penitentiary or county jail. . . .

See also under Disorderly Conduct and Prostitution, page 10; Commitment and Sentence, page 88; Habitual Criminals, page 128; Abandonment, page 77; Prostitution in Tenement Houses, page 18; and State Farms, page 97.

Incest.

When persons within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, intermarry or commit adultery or fornication with each other, each of them is punishable by imprisonment for not more than ten years.[1]

This law does not apply to marriages between uncle and niece prior to 1893;[2] nor between stepdaughter and stepfather after stepmother's death, but does apply to prohibited acts between father and illegitimate daughter,[3] and between half brother and half sister. The woman is an accomplice in incest,[4] and therefore corroborative testimony is necessary to obtain a conviction, but the confessions made by defendant as to immoral relations leading up to the crime are admissible.

The crime of incest is merged in that of rape; it has been held that the statute against incest applied only when the connection was by mutual consent and that when the act complained of was accomplished by force used by the defendant to such an extent as to render him guilty of rape the charge of incest was not sustained,[5] but when the case has been tried and submitted without objection as one for incest, the defendant cannot upon appeal contend that the crime proved was rape which merged the lesser crime.[6]

For the prohibited degrees of consanguinity, see Marriage, page 59.

11 Crim. P. 887. Paragraph 4 of this section in the form above does not take effect until Sept. 1, 1915; until then the only part of paragraph 4 in effect is subd. (e).

12 Crim. P. 891.

13 Crim. P. 892.

1 P. L. 1110.

2 Weisberg v. Weisberg, 112 A. D. 231.

3 People v. Lake, 110 N. Y. 61.

4 People v. Block, 120 A. D. 364.

5 People v. Harriden, 1 Park 344.

6 People v. Block, supra.

Indecency.

A person who wilfully and lewdly exposes his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another so to expose himself, is guilty of a misdemeanor.[1]

The exposure for hire of their persons by six women before five men in a house of prostitution, although the windows, shutters and doors were closed, is exposure in a public place under the meaning of this section.[2]

The intent with which the act is committed is material and it must be shown that he was guilty of an intentional, wanton, and indecent exposure of his person to warrant a conviction.[3]

Any person who as owner, manager, director or agent or in any other capacity prepares, advertises, gives, presents or participates in, any obscene, indecent, immoral or impure drama, play, exhibition, show or entertainment, which would tend to the corruption of the morals of youth or others, and every person aiding or abetting such act, and every owner or lessee or manager of any garden, building, room, place or structure, who leases or lets the same or permits the same to be used for the purposes of any such drama, play, exhibition, show or entertainment, knowingly, or who assents to the use of the same for any such purpose, shall be guilty of a misdemeanor.[4]

A person who sells, lends, gives away or shows, or offers to sell, lend, give away, or show, or has in his possession with intent to sell, lend or give away, or to show, or advertises in any manner, or who otherwise offers for loan, gift, sale or distribution, any obscene, lewd, lascivious, filthy, indecent or disgusting book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, photograph, figure or image, or any written or printed matter of an indecent character; or any article or instrument of indecent or immoral use, or purporting to be for indecent or immoral use or purpose, or who designs, copies, draws, photographs, prints, utters, publishes, or in any manner manufactures, or prepares any such book, picture, drawing, magazine, pamphlet, newspaper, story paper, writing, paper, figure, image, matter, article or thing, or who writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information directly or indirectly, stating, or purporting so to do, where, how, of whom, or by what means any, or what purports to be any, obscene, lewd, lascivious, filthy, disgusting or indecent book, picture, writing, paper, figure, image, matter, article or thing, named in this section can be purchased, obtained or

1 P. L. 1140. See also C. O., Chap. 27, § 3.

2 People v. Bixby, 4 Hun 636.

3 People v. Police Com'rs., 15 A. D. 69.

4 P. L. 1140-a.

had or who has in his possession, any slot machine or other mechanical contrivance with moving pictures of nude or partly denuded female figures which pictures are lewd, obscene, indecent or immoral, or other lewd, obscene, indecent or immoral drawing, image, article or object, or who shows, advertises or exhibits the same, or causes the same to be shown, advertised, or exhibited, or who buys, owns or holds any such machine with the intent to show, advertise or in any manner exhibit the same; or who

Prints, utters, publishes, sells, lends, gives away or shows, or has in his possession with intent to sell, lend, give away or show, or otherwise offers for sale, loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper, devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust or crime; or who,

In any manner, hires, employs, uses or permits any minor or child to do or assist in doing any act or thing mentioned in this section, or any of them,

Is guilty of a misdemeanor, and, upon conviction, shall be sentenced to not less than ten days nor more than one year imprisonment or be fined not less than fifty dollars nor more than one thousand dollars or both fine and imprisonment for each offense.[5]

A defendant cannot be convicted of selling an obscene book upon proof that he bought the book for another.[6]

A person who sells, lends, gives away, or in any manner exhibits or offers to sell, lend or give away, or has in his possession with intent to sell, lend or give away, or advertises, or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception, or for causing unlawful abortion, or purporting to be for the prevention of conception, or for causing unlawful abortion, or advertises, or holds out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor, and shall be liable to the same penalties as provided in section eleven hundred and forty-one of this chapter.[7]

Any person who shall expose, place, display, post up, exhibit or paint, print or mark, or cause to be exposed, placed, dis-

5 P. L. 1141.
6 People v. Kaufman, 14 A. D. 305.
7 P. L. 1142.

played, posted, exhibited or painted, printed or marked in or on any building, structure, billboard, wall or fence, or on the street, or in or upon any public place, any placard. poster, bill or picture, or shall knowingly permit the same to be displayed on property belonging to or controlled by him, which placard, poster, bill or picture shall tend to demoralize the morals of youth or others or which shall be lewd, indecent, or immoral, shall be guilty of a misdemeanor.[8]

A person who deposits, or causes to be deposited, in any post-office within the state, or places in charge of an express company, or of a common carrier, or other person, for transportation, any of the articles or things specified in the last two sections, or any circular, book, pamphlet, advertisement, or notice relating thereto with the intent of having the same conveyed by mail or express, or in any other manner, or who knowingly or wilfully receives the same, with intent to carry or convey, or knowingly or wilfully carries or conveys the same, by express, or in any other manner except in the United States mail, is guilty of a misdemeanor.[9]

The Ordinances of City of New York provide[10] that the commissioner of licenses shall regulate and control all motion-picture houses and open-air motion-picture theatres and that inspectors appointed by him for that purpose shall report to him any offense against morality, decency or public welfare committed in said exhibitions.

The provisions of the Federal law on this subject are as follows:

Every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, printing or other publication of an indecent character, and every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use; and every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose; and every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information directly or indirectly, . . . for preventing conception or producing abortion, or for any indecent or immoral purpose; and every description calculated to induce, or incite a person to use or apply any such article, instrument, substance, drug, medicine, or thing, is hereby declared to be non-mailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier. Whoever shall knowingly deposit, or cause to be deposited for mailing or delivery, any-

8 P. L. 1141-a.
9 P. L. 1143.
10 C. O., Chap. 3, § 31, 41.

thing declared by this section to be nonmailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, shall be fined not more than five thousand dollars or imprisoned not more than five years, or both.[11]

All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which, any delineations, epithets, terms, or language, of an indecent, lewd, lascivious, obscene, libelous, scurrilous, defamatory or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, matter written or printed or otherwise impressed or apparent, is hereby declared nonmailable matter, and shall not be conveyed in the mails nor delivered from any postoffice nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postmaster General shall prescribe. Whoever shall knowingly deposit or cause to be deposited, for mailing or delivery, anything declared by this section to be nonmailable matter, who shall knowingly take the same or cause the same to be taken from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than five thousand dollars or imprisoned not more than five years, or both.[12]

Whoever shall bring or cause to be brought into the United States from any foreign country, or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier, for carriage from one state to any other, any obscene book, picture, letter, writing, print, or any drug, medicine, article, or thing intended for preventing conception, or producing abortion, or for any indecent or immoral use, or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how or of whom, or by what means any of the hereinbefore mentioned articles, matters, or things may be obtained or made; or whoever shall knowingly take or cause to be taken from such express company or other common carrier any matter or thing the depositing of which for carriage is herein made unlawful, shall be fined not more than five thousand dollars, or imprisoned not more than five years or both.[13]

Liquor.

The laws pertaining to the traffic in liquor in so far as they relate to the subject matter of this Manual are as follows:

Traffic in liquor shall not be permitted . . . in any premises or in any yard, booth, garden or other place appertaining thereto or connected therewith which any person while the

[11] U. S. P. L. 211.
[12] U. S. P. L. 212.
[13] U. S. P. L. 245.

holder of a liquor tax certificate issued for said premises, or his agent, had suffered or permitted to become disorderly or in which such person had suffered or permitted any gambling, or in any premises which have or had any opening or means of entrance or passageway for persons or things between such premises and any other room or place which any such person whosoever has suffered or permitted to become disorderly or in which any gambling has been suffered or permitted, by reason of which offense or offenses any liquor tax certificate has been revoked or any such person has been convicted of a violation of the provisions of clause e of section thirty of this chapter relating to gambling or disorder, or of section eleven hundred and forty-six or any section of article eighty-eight of the penal law, until one year from the date of the entry of the order revoking a certificate or the judgment of conviction for such violation, notwithstanding at the time of any such conviction there be an unexpired liquor tax certificate issued for said premises not forfeited by reason of such conviction or notwithstanding at the time of such revocation or conviction the said premises be not certificated for traffic in liquors; provided that the said period of one year shall be computed from the date of the actual discontinuance of the traffic in liquors at the premises by reason of any such revocation or conviction, and any period of time subsequent to such revocation or conviction during which such traffic is not discontinued, whether by reason of the existence of a stay or injunction order or the pendency of any action or proceeding, or otherwise, shall not be deemed a part or portion of the said period of one year; provided further that the discontinuance of traffic in liquors for one year, by reason of the provisions of this subdivision shall not operate or be construed to forfeit any right to traffic which, under the provisions of this section or of section fifteen of this chapter, attached to the premises where traffic is so discontinued.[1]

The license will be revoked if disorderly or illegal practices are carried on, though personal knowledge on the part of the proprietor be not shown.[2] The court as far as possible will not permit a person whose license has been revoked for running a disorderly place to open within a year through subterfuge.[3] Where on three occasions men were solicited in a rear room of a saloon by women who used lewd language and exposed their persons there is sufficient evidence to revoke license on ground that it constituted a disorderly house.[4] When proof establishes that premises are the nightly resort of prostitutes

1 L. T. L. 23, Subd. 4.

2 Matter of Clement (Guske certificate), 67 Misc. 525; Clement v. Federal Union Surety Co., 122 A. D. 18.

3 Matter of Clement (Haas certificate), 69 Misc. 181.

4 Matter of Clement (Siems certificate), 141 A. D. 139.

engaged in plying their trade by soliciting men in saloons that is sufficient to revoke license.[5]

Where there has been a conviction for maintaining disorderly premises where liquor traffic was lawfully carried on prior to the enactment of the statute forbidding such traffic within 200 feet of a schoolhouse, no certificate will be issued for said premises so long as a schoolhouse exists.[6]

No corporation, association, copartnership or person, whether taxed under this chapter or not, shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away, any liquors to:

1. Any minor under the age of eighteen years; nor to such minor for any other person;

2. To any intoxicated person;

3. To any habitual drunkard; . . .

5. To any person to whom such corporation, association, copartnership or person may be forbidden to sell by notice in writing from the parent, guardian, husband, wife or child of such person over sixteen years of age, or by a magistrate or overseer of the poor, peace officer or constable of the town, or by the mayor or chief of police of a city; provided, however, that such notice in writing by a magistrate or overseer of the poor of the town shall apply only in the case of a person who is wholly or partly a charge upon the town, which fact shall be stated in such notice; and that such notice in writing by the mayor, chief of police of a city or constable or peace officer shall apply only in the case of a person who has been convicted of a felony or misdemeanor five or more times, which fact shall be stated in said notice.[7]

. . . It shall not be lawful for any person . . . to suffer or permit any gambling in the place designated by the liquor tax certificate as that in which the traffic in liquors is to be carried on or in any yard, booth, garden or any other place appertaining thereto or connected therewith, or to suffer, permit or have any opening or means of entrance or passageway for persons or things between the room or place where the traffic in liquors is carried on, and any other room or place where any person whosoever suffers or permits any gambling, or to suffer or permit such premises to become disorderly, or to suffer, permit or have any opening or means of entrance or passageway for persons or things between the room or place where the traffic in liquors is carried on, and any other room or place which any person whosoever suffers or permits to become disorderly, or to carry on or to permit to be carried on or to be interested in any traffic, business or occupation, the carrying on of which is in violation of law; or

5 Matter of Clement (Kennedy certificate), 142 A. D. 930; Matter of Clement (Ruehl certificate), 144 A. D. 156.

6 Matter of Farley (Schultz certificate), 84 Misc. 594.

7 L. T. L. 29.

To permit any girl or woman, not a member of his family, or any minor under the age of eighteen years, or to knowingly permit any person who has been convicted of a felony to sell or serve any liquor upon the premises; or to permit any person described in section 29 of this chapter as "persons to whom liquor shall not be sold or given away" to enter and remain in any barroom where liquors are sold. . . .[8]

It is no defense in a proceeding to cancel a liquor tax license upon the ground of violation of this section in permitting person under eighteen years to serve liquors, that the person licensed did not knowingly or purposely commit such violation.[9]

If the holder of any liquor tax certificate shall be convicted of keeping a disorderly house, in violation of section 1146 of the penal law, or in violation of any municipal ordinance prescribing the same or any similar offense, or be convicted of any offense prescribed in articles 88 or 130 of the penal law, or be convicted of the same or any similar offense prescribed in any municipal ordinance, or be convicted of any felony whatsoever, said certificate holder shall forfeit any and every liquor tax certificate held by him at the time of such conviction, and be deprived of all rights and privileges thereunder. If any clerk, agent, employee or servant of a holder of a liquor tax certificate shall commit any of such offenses at a place for which a liquor tax certificate has been issued, and be convicted thereof, the holder of such liquor tax certificate shall forfeit the same, and be deprived of all rights and privileges thereunder.[10]

It shall not be lawful to sell or furnish any wine, beer or strong or spirituous liquors to any person in the auditorium or lobbies of any place of exhibition or performance mentioned in section 1472 of this act, or in any apartment connected therewith by any door, window or other aperture, except that the commissioner of licenses may, in his discretion, and subject to such regulations and restrictions as he may determine, permit the same to be sold or furnished while concerts, consisting of vocal or instrumental music only are being given in a place duly licensed by him as hereinbefore provided. Such permission shall only be operative so long as it shall be lawful under the laws of this state to sell or furnish wine, beer or strong or spirituous liquors at such place, and may be revoked at any time by the commissioner of licenses. It shall not be lawful to employ or furnish or permit or assent to the employment or attendance of any female to wait on or attend in any manner, or furnish refreshments to the audience or spectators or any of them, at any of the exhibitions or performances mentioned in said section, or at any other place of public amusement in the

8 L. T. L. 30, Subd. E. & F.

9 Matter of Clement (Muldoon certificate), 64 Misc. 439.

10 L. T. L. 36, Subd. 7.

city of New York. The provisions of this act shall not be construed to interfere with the right of any incorporated or other society, organized and maintained for the cultivation of vocal or instrumental music, to exercise and practice the same in good faith for themselves only, and not for the observation and entertainment of the public; nor shall the use or occupation by any such society for the purposes aforesaid of any hall or room connected with any place wherein by the laws of this state it is lawful to sell wine, beer or strong or spirituous liquors be construed to make such place a place of public amusement within the provisions of this act.[11]

Charter 1484 provides for cancellation of license for violation of the foregoing.

Nuisances.

A "public nuisance" is a crime against the order and economy of the state, and consists in unlawfully doing an act, or omitting to perform a duty, which act or omission:

1. Annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons; or,

2. Offends public decency. . . .[1]

The maintenance of a building for the purpose of committing and performing therein unlawful abortions, is a public nuisance; in fact, it is a nuisance for a person by public advertisement to invite and receive persons in a house for this purpose.[2]

Keeping a house of prostitution is a public nuisance.[3]

To hold a person as owner of a tenement house in which such a nuisance is alleged, it must be established by proof that he is the owner, lessee or in control of the premises in question, and that knowledge was brought to him of the conditions, and that he permitted them or failed to make a reasonable effort to correct them.[4]

A pantomime may be indictable as a public nuisance where it suggests indecency, excites impure imaginations and is calculated to corrupt public morals.[5]

A person who commits or maintains a public nuisance, the punishment for which is not specially prescribed, or who wilfully omits or refuses to perform any legal duty relating to the removal of such a public nuisance, is guilty of a misdemeanor.[6]

11 Charter 1483. See also C. O., Chap. 3, § 11.

1 P. L. 1530.

2 People v. Curtis, 152 A. D. 372; aff'd, 206 N. Y. 747; People v. Hoffman, 118 A. D. 862.

3 Jacobowsky v. People, 6 Hun 524.

4 People v. Shenk, 142 N. Y. Supp. 1081.

5 People v. Doris, 14 A. D. 117.

6 P. L. 1532.

A person who:
Lets, or permits to be used, a building, or portion of a building, knowing that it is intended to be used for committing or maintaining a public nuisance; . . . is guilty of a misdemeanor.[7]

See Drugs, page 53.

Where a person is convicted of keeping or maintaining a public nuisance, and sentenced to punishment, the court may in its judgment, in addition to or in place of other punishment, direct that the nuisance be abated, and issue an order to the sheriff of the proper county to execute the judgment as therein directed.[8]

The owner, lessee, tenant, and occupant of any building or premises, or of any part thereof, where there shall be a nuisance, or a violation of any ordinance or section of the sanitary code, shall be jointly and severally liable therefor, in so far as they, respectively, have the power to prevent or abate such nuisance or prevent such violation, and, to such extent, each of them may be required to abate the nuisance, or comply with the order of the board of health in respect to such building, premises, or part thereof.[9]

The following provisions of the Public Health law relate to the abatement as a nuisance of premises which are used for disorderly purposes:

For the purpose of this article any house, building, place or any separate part or portion thereof, or the ground itself, in or upon which assignation or prostitution is conducted, practiced, permitted, carried on or exists is declared a nuisance, and whoever knowingly shall erect, establish, permit, continue, maintain, own, lease or sublease any house, building, erection, place or any separate part or portion thereof, used for such purposes, shall be guilty of maintaining a nuisance.[10]

When a nuisance is created, conducted, kept, maintained, permitted or exists in any county, the district attorney of the county, any taxpayer residing in the immediate neighborhood of the alleged nuisance, or any domestic corporation organized for the suppression of vice, subject to or which submits to visitation by the state board of charities, and possesses a certificate from such board of such fact and of conformity with its regulations, may maintain an action in the name of the people of the state of New York, upon the relation of such taxpayer, corporation or district attorney, to perpetually enjoin such nuisance by any owner, agent, lessee, occupant or employee, of the house, building, erection, place or any separate part or portion thereof or ground, in or upon which such nuisance is alleged to be conducted, kept, permitted or exists.[11]

7 P. L. 1533, Sub. 1.
8 Crim. P. 953.
9 S. C. 51.
10 P. H. L. 343-a.
11 P. H. L. 343-b.

Such action shall be brought in the supreme court of the county in which the property is situated. At or before the commencement of the action a complaint alleging the facts constituting the nuisance shall be filed in the office of the clerk of the county, together with a notice of the pendency of the action, containing the names of the parties, the object of the action and a brief description of the property affected thereby. Such notice shall be immediately recorded by the clerk in accordance with the provisions of section 1672 of the code of civil procedure. After the filing of the complaint, application for a temporary injunction may be made to the supreme court or a judge thereof who shall grant a hearing thereon if satisfied of the good faith of the application and shall direct the service upon the owner, agent or occupant of the property in or upon which a nuisance is alleged to exist, of a copy of the complaint, together with a notice of the time and place of the hearing of the application. Such notice shall be served at least five days before the hearing. If the hearing be continued at the instance of the defendant, a temporary injunction restraining any person from continuing such nuisance shall issue as a matter of course. If upon the hearing, the allegations be sustained to the satisfaction of the court or judge, such court or judge shall issue a temporary injunction, without bond, restraining any person from continuing the nuisance.[12]

The action for the permanent injunction shall be triable at the term of the supreme court immediately following the issuance of the temporary injunction as provided in this article. In such action evidence of the common fame and general reputation of the place, of the inmates thereof, or of those resorting thereto, shall be competent evidence to prove the existence of the nuisance. An admission or finding of guilt of any person of a violation of section 1146 of the penal law at such place shall be presumptive evidence of the nuisance.[13]

If the existence of the nuisance be established upon the trial, a judgment shall be entered which shall permanently and perpetually enjoin the defendant or defendants and any other owner, agent, lessee, occupant or employee from conducting, keeping, maintaining, permitting or continuing the nuisance complained of on the premises in or on which the nuisance was maintained.[14]

A violation of a judgment entered under this article shall constitute a contempt of court punishable by imprisonment for not less than ten days nor more than twelve months.

If there be a violation of such judgment, an order shall issue directing the closing and vacating of the premises and enjoining the use thereof for not less than thirty days nor more than one year from the entry of the order and the court or judge shall direct the sheriff to enforce such order and shall allow him a reasonable fee, which shall be a lien upon the premises. . . .[15]

Pimps and Panders.

Every male person who lives wholly or in part on the earnings of prostitution, or who in any public place solicits for immoral purposes, is guilty of a misdemeanor. A male person who lives with or is habitually in the company of a prostitute

12 P. H. L. 343-c.
13 P. H. L. 343-d.
14 P. H. L. 343-g.
15 P. H. L. 343-h.

and has no visible means of support, shall be presumed to be living on the earnings of prostitution.[1]

1. The importation of women and girls into this state or the exportation of women and girls from this state for immoral purposes is hereby prohibited and whoever shall induce, entice or procure, or attempt to induce, entice or procure, to come into this state or to go from the state, any woman or girl for the purpose of prostitution or concubinage, or for any other immoral purpose, or to enter any house of prostitution in this state or any one who shall aid any such woman or girl in obtaining transportation to or within this state, shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than two years nor more than twenty years and by a fine not exceeding five thousand dollars.

2. Any person who shall place any female in the charge or custody of any other person for immoral purposes or in a house of prostitution or elsewhere with intent that she shall live a life of prostitution; or any person who shall compel or shall induce, entice or procure, or attempt to induce, entice, procure or compel any female to reside with him or with any other person for immoral purposes, or for the purposes of prostitution or shall compel or attempt to induce, entice, procure or compel any such female to reside in a house of prostitution or compel or attempt to induce, entice, procure or compel her to live a life of prostitution shall be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for not less than two years nor more than twenty years and by a fine not exceeding five thousand dollars.

3. Any person who shall induce, entice or procure, or attempt to induce, entice or procure any woman or girl for the purposes of prostitution or concubinage, or for any other immoral purpose, or to enter any house of prostitution in this state shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than two years nor more than twenty years and by a fine not exceeding five thousand dollars.

4. Any person who shall receive any money or other valuable thing for or on account of placing in a house of prostitution or elsewhere any female for the purpose of causing her to cohabit with any male person or persons to whom she is not married shall be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than two years nor more than twenty years and by a fine not exceeding one thousand dollars.

5. Any person who shall pay any money or other valuable thing to procure any female for the purpose of placing her for immoral purposes in any house of prostitution or elsewhere, with or without her consent, shall be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for

[1] P. L. 1148.

a period of not less than two years nor more than twenty years and by a fine not exceeding five thousand dollars.

6. Any person who shall knowingly receive any money or other valuable thing for or on account of procuring and placing in the custody of another person for immoral purposes any woman, with or without her consent, shall be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than three years nor more than twenty-five years and by a fine not exceeding five thousand dollars.

7. Any person who shall hold, detain, restrain or attempt to hold, detain or restrain in any house of prostitution or other place, any female for the purpose of compelling such female, directly or indirectly, by her voluntary or involuntary service or labor to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred in such house of prostitution or in any other place shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than two nor more than twenty years and by a fine not exceeding five thousand dollars.

8. Any person who shall knowingly accept, receive, levy, or appropriate any money or other valuable thing without consideration, from the proceeds or earnings of any woman engaged in prostitution shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than two years nor more than twenty years and by a fine not exceeding one thousand dollars. Any such acceptance, receipt, levy, or appropriation of such money or valuable thing shall upon any proceeding or trial for violation of this section be presumptive evidence of lack of consideration.

9. No conviction shall be had under this section upon the testimony of the female unless supported by other evidence.[2]

A conviction may be had although a trap was laid for defendant and the persons receiving the custody of the women did not intend to use them for immoral purposes; the word "knowingly" as used here, is limited to the receipt of the money, to the procuring and the immoral purposes for which the women were procured, *i.e.,* relates to the intent and purpose of the defendant.[3]

The manager of a house of prostitution who engaged the voluntary inmates, directed their activities and shared in their earnings may be convicted under subd. 8 of this section.[4]

Any man who by force, fraud, intimidation or threats, places or leaves, or procures any other person to place or leave, his wife in a house of prostitution, or to lead a life of prostitution,

2 P. L. 2460.

3 People v. Moore, 142 A. D. 402; aff'd, 201 N. Y. 570.

4 People v. Fegelli, 163 A. D 576; aff'd, 214 N. Y. 670.

shall be guilty of a felony and upon conviction thereof shall be imprisoned for not more than ten years.[5]

In all prosecutions under the previous section, the wife shall be a competent witness against the husband, but no conviction under this article shall be had upon the testimony of the wife unsupported by other evidence.[6]

Rape.

A person who perpetrates an act of sexual intercourse with a female not his wife, against her will or without her consent; or,

1. When through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, she is incapable of giving consent, or, by reason of mental or physical weakness, or immaturity, or any bodily ailment, she does not offer resistance; or,

2. When her resistance is forcibly overcome; or,

3. When her resistance is prevented by fear of immediate and great bodily harm, which she has reasonable cause to believe will be inflicted upon her; or,

4. When her resistance is prevented by stupor, or weakness of mind produced by an intoxicating, or narcotic, or anesthetic agent; or, when she is known by the defendant to be in such state of stupor or weakness of mind from any cause; or,

5. When she is, at the time, unconscious of the nature of the act, and this is known to the defendant; or when she is in the custody of the law, or of any officer thereof, or in any place of lawful detention, temporary or permanent,

Is guilty of rape in the first degree and punishable by imprisonment for not more than twenty years.

A person who perpetrates an act of sexual intercourse with a female, not his wife, under the age of eighteen years, under circumstances not amounting to rape in the first degree, is guilty of rape in the second degree, and punishable with imprisonment for not more than ten years.[1]

Sexual intercourse with a woman under eighteen is rape, whether accomplished by force or not.[2] The fact that the girl is under eighteen must be clearly proven.[3]

To support a charge of rape when complainant is over eighteen, conscious and in possession of her mental and physical powers, she must have resisted to the extent of her ability, and have been overcome by force or tempted into submission by threats, unless she was where resistance would have been useless.[4] There must always be the utmost resistance and the utmost reluctance.[5]

5 P. L. 1090.
6 P. L. 1091.
1 P. L. 2010.
2 People v. Friedman, 139 A. D. 795.
3 People v. Marks, 146 A. D. 11.
4 People v. Clemons, 37 Hun 580; People v. Dohring, 59 N. Y. 374; People v. Connor, 126 N. Y. 278.
5 People v. Morrison, 1 Park. 625.

Any sexual penetration, however slight, is sufficient to complete the crime.[6]

Corroborating evidence as to the actual fact of penetration may be circumstantial.[7]

No conviction for rape can be had against one who was under the age of fourteen years, at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, beyond a reasonable doubt.[8]

No conviction can be had for rape or defilement upon the testimony of the female defiled, unsupported by other evidence.[9]

The other evidence may be entirely circumstantial[10] but the corroborative evidence, whether consisting of acts or admissions, must be at least of such a character and quality as tends to prove the guilt of the accused and must extend to every material fact essential to constitute the crime, including proof of penetration.[11] Statements made by complainant to other persons is not in itself sufficient corroboration.[12]

Evidence as to the illicit relations between the defendant and the complainant subsequent to the act alleged is incompetent.[13]

If opportunity for the commission of the crime and the recent rupture of the hymen be shown, there is sufficient corroborating evidence, but mere opportunity for the commission of the crime is not such corroboration.[14]

Disclosures made by a female within a reasonable time after an assault are admissible, but are not "other evidence" within the meaning of this section.[15]

The woman raped is not an accomplice[16] and it would therefore seem that a conviction may be had where testimony is corroborated solely by that of an accomplice to the crime.

See Assault, page 8, and Incest page 29.

Seduction Under Promise of Marriage.

A person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment for not more than five

6 P. L. 2011.
7 People v. De Nigris, 157 A. D. 798.
8 P. L. 2012.
9 P. L. 2013.
10 People v. Grauer, 12 A. D. 464.
11 People v. Seaman, 152 A. D. 495.
12 Idem.
13 People v. Doyle, 158 A. D. 37.
14 People v. Terwilliger, 74 Hun 310; aff'd, 142 N. Y. 629; People v. Kingsley, 166 A. D. 320.
15 People v. Shaw, 158 A. D. 146.
16 People v. Block, 120 A. D. 364.

years, or by the fine of not more than one thousand dollars or both.[1]

Merely having sexual intercourse with a female does not constitute seduction; she must actually be seduced in the usual meaning of the word.[2]

The promise of marriage must be absolute; where the female consents under promise of marriage in case she becomes pregnant, a conviction cannot be had.[3]

The female seduced must be chaste in fact, a mere reputation for chastity is not sufficient; the fact that the previous act of unchastity was committed when she was a mere child does not render her chaste under this section. A woman can be seduced but once. The age of consent fixed for rape does not apply to seduction and a girl under eighteen may consent.[4]

The subsequent intermarriage of the parties, or the lapse of two years after the commission of the offense before the finding of an indictment, is a bar to a prosecution for a violation of this section.[5]

Subsequent intermarriage, however, is a bar to prosecution only where the marriage takes place before judgment.[6]

No conviction can be had for an offense specified in the last section, upon the testimony of the female seduced, unsupported by other evidence.[7]

The testimony of female seduced need only be supported as to the promise of marriage and the sexual intercourse and may be entirely circumstantial.[8]

Every master, officer, seaman, or other person employed on board of any American vessel who, during the voyage, under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both; but subsequent intermarriage of the parties may be pleaded in bar of conviction.[9]

When a person is convicted of a violation of the section last preceding, the court may in its discretion, direct that the amount of the fine, when paid, be paid for the use of the female

1 P. L. 2175.
2 People v. Gumaer, 4 A. D. 412.
3 People v. Van Alstyne, 144 N. Y. 361.
4 People v. Nelson, 153 N. Y. 90.
5 P. L. 2176.
6 People v. Frost, 198 N. Y. 110.
7 P. L. 2177.
8 People v. Gumaer, 80 Hun 78; People v. Orr, 92 Hun 199.
9 U. S. P. L. 280.

seduced, or her child, if she have any; but no conviction shall be had on the testimony of the female seduced, without other evidence, nor unless the indictment is found within one year after the arrival of the vessel on which the offence was committed at the port of its destination.[10]

White Slave Traffic.

In 1910 the Federal Government in order to combat the interstate and international traffic in women for immoral purposes, enacted a law known commonly as the White Slave Traffic Act.

While the intention of its framers was, as its name indicates, principally directed against commercialized traffic in women, the subsequent adjudications of the courts, have considerably widened its scope. The Supreme Court of the United States has not as yet finally decided how wide that scope shall be, but the tendency of the lower Federal courts has been to extend rather than limit its operation.

The act is of such importance that it is quoted in its entirety:

1. The term "interstate commerce," as used in this act, shall include transportation from any state or territory or the District of Columbia to any other state or territory or the District of Columbia, and the term "foreign commerce," as used in this act, shall include transportation from any state or territory or the District of Columbia to any foreign country and from any foreign country to any state or territory or the District of Columbia.

2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other im-

[10] U. S. P. L. 281.

moral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

3. That any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any territory or the District of Columbia, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than five thousand dollars, or by imprisonment for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court.

4. That any person who shall knowingly persuade, induce, entice, or coerce any woman or girl under the age of eighteen years from any state or territory or the District of Columbia to any other state or territory or the District of Columbia, with the purpose and intent to induce or coerce her, or that she shall be induced or coerced to engage in prostitution or debauchery, or any other immoral practice, and shall in furtherance of such purpose knowingly induce or cause her to go and to be carried or transported as a passenger in interstate commerce upon the line or route of any common carrier or carriers, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment for a term not exceeding ten years, or by both such fine and imprisonment, in the discretion of the court.

5. That any violation of any of the above sections two, three, and four shall be prosecuted in any court having jurisdiction of crimes within the district in which said violation was committed, or from, through, or into which any such woman or girl may have been carried or transported as a passenger in interstate or foreign commerce, or in any territory or the District of Columbia, contrary to the provisions of any of said sections.

6. That for the purpose of regulating and preventing the transportation in foreign commerce of alien women and girls for purposes of prostitution and debauchery, and in pursuance of and for the purpose of carrying out the terms of the agree-

ment or project of arrangement for the suppression of the white-slave traffic, adopted July 25, 1902, for submission to their respective governments by the delegates of various powers represented at the Paris conference and confirmed by a formal agreement signed at Paris on May 18, 1904, and adhered to by the United States on June 6, 1908, as shown by the proclamation of the President of the United States, dated June 15, 1908, the Commissioner-General of Immigration is hereby designated as the authority of the United States to receive and centralize information concerning the procuration of alien women and girls with a view to their debauchery, and to exercise supervision over such alien women and girls, receive their declarations, establish their identity, and ascertain from them who induced them to leave their native countries, respectively; and it shall be the duty of said Commissioner-General of Immigration to receive and keep on file in his office the statements and declarations which may be made by such alien women and girls, and those which are hereinafter required pertaining to such alien women and girls engaged in prostitution or debauchery in this country, and to furnish receipts for such statements and declarations provided for in this act to the persons, respectively, making and filing them.

Every person who shall keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic, shall file with the Commissioner-General of Immigration a statement in writing setting forth the name of such alien woman or girl, the place at which she is kept, and all facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procuration to come to this country within the knowledge of such person, and any person who shall fail within thirty days after such person shall commence to keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States from any of the countries, party to the said arrangement for the suppression of the white-slave traffic, to file such statement concerning such alien woman or girl with the Commissioner-General of Immigration, or who shall knowingly and willfully state falsely or fail to disclose in such statement any fact within his knowledge or belief with reference to the age, nationality, or parentage of any such alien woman or girl, or concerning her procuration to come to this country, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than two thousand dollars, or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment, in the discretion of the court.

In any prosecution brought under this section, if it appear that any such statement required is not on file in the office of the Commissioner-General of Immigration, the person whose duty it shall be to file such statement shall be presumed to have failed to file said statement, as herein required, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section, on the ground or for the reason that the statement so required by him, or the information therein contained, might tend to criminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture under any law of the United States for or on account of any transaction, matter, or thing concerning which he may truthfully report in such statement, as required by the provisions of this section.

7. That the term "Territory," as used in this act, shall include the district of Alaska, the insular possessions of the United States, and the Canal Zone. The word "person," as used in this act, shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any other person or by any corporation, company, society, or association within the scope of his employment or office shall in every case be also deemed to be the act, omission, or failure of such other person, or of such company, corporation, society, or association, as well as that of the person himself.

8. That this act shall be known and referred to as the "White-slave traffic act." [1]

This law has been declared constitutional.[2]

The method employed to convey the female is not confined to transportation by common carrier.[3]

The fact that the female transported is not actually used for purposes of prostitution or other immoral purposes after her arrival is immaterial; the offense is complete when she has been transported for that purpose.[4] This act can be violated through a third party acting for the defendant.[5]

Acts done and declarations made by the accused after the alleged transportation are admissible as bearing upon the intent.[6]

An indictment alleging that the defendant aided in procuring transportation over an interstate railroad for the purpose of prostitution is sufficient.[7]

1 Stat. L. 825; Act of June 25, 1910, C. 395.
2 Hoke v. U. S., 227 U. S. 308.
3 Wilson v. U. S., 232 U. S. 563.
4 Wilson v. U. S., supra.
5 Hoke v. U. S., supra.
6 Kulp v. U. S., 210 Fed. 249.
7 Weddel v. U. S., 213 Fed. 208.

A violation of this act is committed by the transportation of a female for the purpose of sexual immorality, without reference to her previous character.[8]

It is not necessary for the female to be transported for purposes of sexual intercourse; the act is designed to cover acts which might ultimately lead to that phase of debauchery which consists of sexual actions. The word "debauchery" as used in the act does not mean sexual intercourse alone, and may be extended to reach vice or immorality other than that applicable to sexual action.[9]

The gist of the offense is the intent and purpose of the defendants when transportation was procured or aided to be procured.[10]

In prosecutions under this act, a wife who was transported by her husband for immoral purposes, is entitled to testify against him,[11] but not if the marriage takes place subsequent to the illegal transportation.[12]

An indictment charging that defendant persuaded a woman to go from one state to another for the purpose of engaging in illicit intercourse, cohabitation and concubinage with the accused was held good, thus giving effect to the words of the act "or for any other immoral purpose," and it has been held that the act prescribed is not limited to commercialized vice.[13] There is, however, a divergence of opinion on this point and in a number of unreported cases in different districts the contrary has been held. The point must at the present be considered as not finally settled.

The provision of Sec. 6 of this act requiring the filing of statements in regard to the harboring of women brought into this country for purposes of prostitution is not confined to persons who have had to do directly or indirectly with the bringing in or sending forth of such women.[14]

A woman who has been transported for an immoral purpose is not an accomplice to the offense of transporting; altho in the Federal Courts the rule requiring the corroboration of the testimony of an accomplice in order to support a conviction does not obtain.[15] But if she has been transported with her consent for purposes of prostitution from one state to another in violation of the White Slave Traffic Act, she may be

8 Suslak v. U. S., 213 Fed. 913.

9 Athanasaw v. U. S., 227 U. S. 326.

10 Athanasaw v. U. S., supra.

11 U. S. v. Rispoli, 189 Fed. 271; Cohen v. U. S., 214 Fed. 23.

12 U. S. v. Gwynne, 209 Fed. 993.

13 U. S. v. Flaspoller, 205 Fed. 1006; Johnson v. U. S., 215 Fed. 679; Diggs v. U. S.; Caminetti v. U. S., 220 Fed. 545.

14 U. S. v. Portale, 235 U. S. 27.

15 Diggs v. U. S., supra.

convicted of the crime of conspiracy with the person transporting her "to commit an offence against the United States" under section 37 of the Federal Penal Code.[16]

On May 18th, 1904, the agreement referred to in the White Slave Traffic Act was entered into by the Governments of Germany, Belgium, Denmark, Spain, France, Great Britain, Italy, Netherlands, Portugal, Russia, Sweden, Norway, Switzerland, Austria-Hungary, and Brazil to "assure to women who have attained their majority, and are subjected to deception and constraint, as well as minor women and girls, an efficacious protection against the criminal traffic known under the name of trade in white women."

Under the agreement each of these governments agrees to establish an authority who will be directed to centralize all information concerning the procuration of women and girls with a view to their debauchery in another country; and agrees to look into and discover particularly in the stations, harbors of embarkation and on the journey, the conductors of women and girls, and to communicate to the authorities at the place of destination, the arrival of the authors, accomplices or victims of the traffic. The governments agree further to see that the victims of the traffic are to be returned to the countries of their origin.

In addition, the governments stipulate to keep a supervision generally over the bureaus or agencies whose business is that of procuring places for women and girls in foreign countries.

See Treaties, Conventions, Etc., between United States and Other Powers, 1776–1909, Vol. II, page 2131.

16 U. S. v. Holte, 236 U. S. 140.

CANADIAN SOCIAL HYGIENE COUNCIL
40 ELM ST., TORONTO

CHAPTER II

REGULATIONS AND OFFENSES AFFECTING SEX MORALITY

Dance Halls.

No public dance hall shall be conducted nor shall dancing be taught or permitted in any public dance hall unless it shall be licensed pursuant to this act and the license be in force and not suspended. Any person violating this section shall be guilty of a misdemeanor.[1]

All public dance halls shall be licensed by the commissioner of licenses of the city of New York; the fee for each such license shall be fifty dollars for each year or fraction thereof. All licenses issued on or between the 1st day of April and the 30th day of September of any year shall expire on the 31st day of March of the succeeding year. All licenses issued on or between the 1st day of October and the 31st day of March of any year shall expire on the 30th day of September of the succeeding year. No license shall be issued unless the place for which it is issued complies with all laws, ordinances, rules and the provisions of any building code applicable thereto and is a safe and proper place for the purpose for which it shall be used, properly ventilated and supplied with sufficient toilet conveniences. Every licensed public dance hall shall post its license at the main entrance to its premises.[2]

No license shall be issued until the licensing authority shall have received a written report of an inspector that the building or premises to be licensed complies with section fourteen hundred and ninety of this title. No license shall be renewed except after reinspection by the licensing authority. Additional inspection of every licensed place may be made under the direction of the licensing authority. All inspectors shall be permitted to have access to all public dance halls at all reasonable times and whenever they are open for dancing, instruction in dancing or for any other purpose. Inspectors shall be required to report all violations. All reports shall be in writing and shall be filed and made public records.[3]

Dancing shall not be permitted in any place in the city of New York licensed to sell liquors, except in a hotel having upwards of fifty bedrooms, unless such place shall also be licensed under section fourteen hundred and ninety. Violation of this provision shall be deemed a violation of the liquor tax

1 Charter 1489. 2 Charter 1490. 3 Charter 1491.

law with respect to such premises. No liquors shall be sold, served or given away, in any public dance hall in which dancing is advertised to be taught, or in which classes in dancing are advertised to be maintained, or in which instruction in dancing is given for hire; or in any room connected with such hall. The word "liquors" as used in this section shall be construed as defined in the liquor tax law of this state. . . .[4]

The license of any public dance hall may be forfeited for habitual disorderly or immoral conduct permitted on the premises and shall be forfeited on conviction of any person for violation of section fourteen hundred and ninety-two of this act, or upon the conviction of any person for violation of section fourteen hundred and eighty-four or section eleven hundred and forty-six of the penal law in or with respect to the premises of any public dance hall. The license of any public dance hall may be revoked by the licensing authority whenever the licensed premises do not comply with section fourteen hundred and ninety of this act, provided that the licensee or person in charge shall be served with a copy of the report or complaint. In any case where a license is revoked or where the licensing authority refuses to renew a license, reasons for the action must be stated in writing and shall be public records. Should the license of any place have been revoked twice within a period of six months, no new license shall be granted to such place for a period of at least one year from the date of the second revocation.[5]

The words "public dance hall," when used in this title, shall be taken to mean

Any room, place or space in the city of New York in which dancing is carried on and to which admission can be had by payment of a fee, or by the purchase, possession or presentation of a ticket or token, or in which a charge is made for caring for clothing or other property, other than a hotel having upwards of fifty bedrooms, or

Any room, place or space in the city of New York, located upon premises which are licensed to sell liquors, other than a hotel having upwards of fifty bedrooms, in which dancing is carried on and to which the public may gain admission, either with or without payment of fee.

The word "dancing" as used in this and the succeeding sections shall not apply to exhibitions or performances in which the persons paying for admission do not participate.[6]

A district inspector shall investigate an application for masque ball, pool-table, theatrical or dance hall license; report his findings to the police commissioner; and recommend whether the place or person involved should be licensed.[7]

4 Charter 1492.
5 Charter 1493.
6 Charter 1488.
7 P. D. R. 733.

Drugs.

A person who . . .

2. Opens or maintains a place where opium, or any of its preparations, is smoked by other persons; or,

3. At such place sells or gives away any opium, or its said preparations, to be there smoked or otherwise used; or,

4. Visits or resorts to any such place for the purpose of smoking opium or its said preparations,

Is guilty of a misdemeanor.[1]

A person who, except on the written or verbal order of a physician, refills more than once prescriptions containing opium, morphine or preparations of either, in which the dose of opium exceeds one-fourth grain, or morphine one-twentieth grain, is guilty of a misdemeanor.[2]

P. L. 1746 provides that alkaloid cocaine or its salts, or alpha or beta eucaine or their salts, or any admixture, compound, solution or product of which cocaine or eucaine or their salts may be an ingredient, shall not be sold, offered for sale, furnished, disposed of, given away or possessed by any person except as provided in said section. The provisions of said section briefly summarized are as follows:

(a) A druggist or pharmacist may sell same on a physician's prescription, verifying the same by inquiry from the physician where the percentage of such substance to the total contents of the prescription exceeds one per cent. He must retain the prescription and no copy of any such prescription shall be made by or delivered to any person, nor shall said prescription be refilled, except that such copy may be made by or delivered, or such prescription refilled, where cocaine or eucaine is a component part but the proportion thereof to the total contents of the prescription does not exceed one grain to the fluid ounce, or in case of ointment, two grains to the ounce. When such substance is sold, the seller must deliver to the buyer a certificate stating the name and address of the seller, the name of the physician, the date of sale and the amount sold, and the possession of such certificate is a defense to a prosecution under the section, provided the holder does not have in his possession more than the amount called for in the certificate and provided further that such certificate shall not legalize the possession of such substance for more than ten days after its issuance if the proportion of such substances exceeds one grain to the fluid ounce, or two grains to the ounce, if it be an ointment, unless the physician writes upon said certificate that the possession thereof is necessary for a longer period. A physician may himself deliver such substance to a patient if he delivers to him also a certificate of the same nature as is required of druggists.

(b) Such substances may be sold in original packages at wholesale by any manufacturer, provided such package is securely sealed and labeled in the manner required by the section and a proper record kept of all sales.

(c) Manufacturers may sell original packages to pharmacists,

1 P. L. 1533. 2 P. L. 1745.

druggists, physicians, veterinarians and dentists upon their written order.

(d) and (e) These paragraphs describe the manner of sealing and labeling and the method of keeping the record of sales. The record is made evidence of the facts contained therein.

(f) All manufacturers, wholesale dealers in drugs, pharmacists, druggists, physicians, veterinarians and dentists are also required to keep a record of all purchases made by them, and the record is made evidence of the facts contained therein. The record shall at all times be open to inspection by any prosecuting officer in this state, or his subordinates, or such persons as are designated by him, and must be preserved for five years after the last entry made therein.

(g) Any person who shall sell, offer to sell, furnish, dispose of or give away such substances, except as provided in the Act; any dentist, veterinarian or physician who shall dispense such substances to a patient, without issuing the certificate required by paragraph (a), and any druggist who shall fill any prescription issued in violation of this section, is guilty of a felony.

(h) Any person other than a manufacturer, wholesale dealer, pharmacist, druggist, physician, veterinarian, or dentist who shall possess any quantity of such substances, unless the possession thereof is authorized by the certificate described in paragraph (a) is guilty of a misdemeanor.

(i) Any person described in paragraph (f) who possesses any of the substances in a place other than that scheduled in his record is guilty of a misdemeanor, except that a physician, veterinarian, or dentist may carry not more than 1⅛ ounces for use in his profession. Any person who fails to keep the necessary record in the manner provided by the Act is guilty of a misdemeanor.

(j) If the amount of such substances does not tally with the record, it is presumptive evidence that the amount unaccounted for has been sold in violation of the section, except that physicians, veterinarians and dentists shall record the gross amount of such substances once in each six months.

(k) This paragraph prescribes that failure to commence record within thirty days after the Act went into effect made the offender guilty of a misdemeanor.

(l) It is a misdemeanor for any drug store to possess more than 1¼ ounces of such substances for each duly registered druggist regularly employed, and more than five ounces irrespective of the number of druggists employed, and for any physician, dentist or veterinarian to possess more than 1⅛ ounces.

(m) The Act does not apply to the regular and ordinary transportation of such substances as merchandise nor to officials possessing same in the pursuance of their duties.

(n) Public hospitals and dispensaries may designate one person in their regular employ to purchase and possess such substances for the exclusive use of such hospital and dispensary. Said substances must be kept therein, the quantity thereof not to exceed 5 ounces. A record must be kept by such hospital or dispensary in the manner provided hereinbefore, the record to be open for inspection as provided in paragraph (f).

1. A person, other than a duly licensed physician or surgeon engaged in the lawful practice of his profession, who has in his possession any narcotic or anesthetic substance, compound or preparation, capable of producing stupor or unconsciousness.

with intent to administer the same or cause the same to be administered to another, without the latter's consent, unless by direction of a duly licensed physician, is guilty of a felony, punishable by imprisonment in the state prison for not more than ten years.

2. The possession by any person, other than as exempted in the foregoing subdivision, of any such narcotic or anesthetic substance or compound, concealed or furtively carried on the person, is presumptive evidence of an intent to administer the same or cause the same to be administered in violation of the provisions of this section.[3]

No pharmacist, druggist, apothecary or other person shall refill more than once, prescriptions containing opium or morphine or preparations of either of them or cocaine or chloral, in which the dose of opium shall exceed one quarter of a grain, or of morphine one-twentieth of a grain or of cocaine one-half of a grain or of chloral ten grains, except upon the written order of a physician.[4]

No opium, morphine, chloral, or cannabis indica, or any other substance giving a physiological reaction similar to that of opium; or any salts, alkaloids, or derivatives, of any of the said drugs or substances; or any preparation, compound, or mixture, containing any of the said drugs or substances or their salts, alkaloids, or derivatives; shall be sold at retail or given away in the city of New York except upon the written prescription of a duly licensed physician, veterinarian, or dentist.

The foregoing provisions shall not, however, apply to preparations, compounds, or mixtures, containing any of the aforesaid drugs or substances or their salts, alkaloids, or derivatives, prepared for external use only, in the form of liniments, ointments, oleates, or plasters.[5]

It is a misdemeanor for any one to sell at retail [6] a hypodermic syringe or hypodermic needle without a written order of a duly licensed physician, dentist, or veterinarian.

COMMITMENT OF USERS OF HABIT-FORMING DRUGS.

The constant use by any person of any habit-forming drug, except under the direction and consent of a duly licensed physician, is hereby declared to be dangerous to the public health. Whenever a complaint shall be made to any magistrate that any person is addicted to the use of any habit-forming drug, without the consent or direction of a duly licensed physician, such magistrate, after due notice and hearing, is satisfied that the complaint is founded and that the person is addicted to the use of a habit-forming drug, shall commit such person to a state, county or city hospital or institutions licensed under the state lunacy commission, or any correctional or charitable institution maintained by the state or any municipality thereof, for the treatment of disease or inebriety. Any court having

3 P. L. 1752.
4 P. H. L. 318.
5 Sanitary Code 126.
6 P. H. L. 249.

jurisdiction of a defendant in a criminal proceeding, if it appears that a defendant is a habitual drug user, may commit such user for a treatment as herein provided at any stage of such proceeding against such defendant, and may stay proceedings, withhold conviction or suspend sentence, pending the period of such commitment. Whenever the chief medical officer of such institution shall certify to any magistrate that any person so committed has been sufficiently treated or give any other reason which is deemed adequate and sufficient, he may discharge the person so committed. Every person committed under the provisions of this section shall observe all the rules and regulations of the institution or hospital. Any such person who wilfully violates the rules and regulations of the institution or repeatedly conducts himself in a disorderly manner may be taken before a magistrate by the order of the chief medical officer of the institution. The chief medical officer may enter a complaint against such person for disorderly conduct and the magistrate, after a hearing and upon due evidence of such disorderly conduct, may commit such person for a period of not to exceed six months to any institution to which persons convicted of disorderly conduct or vagrancy may be committed, and such institution shall keep such persons separate and apart from the other inmates, provided that nothing in this section shall be construed to prohibit any person committed to any institution under its provisions from appealing to any court having jurisdiction for a review of the evidence in which this commitment was made.[7]

See also P. H. L., Secs. 245 to 249-d, added by Chap. 363, L. 1914, and amended by Chap. 327, L. 1915, relating to Habit-forming Drugs.

Employment Agencies.

No licensed person conducting an employment agency shall send or cause to be sent any female as a servant, employee, inmate, entertainer or performer, or any male as an employee or entertainer to any place of bad repute, house of ill-fame, or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purposes of prostitution, or gambling house, the character of which such licensed person could have ascertained upon reasonable inquiry. No licensed person shall send out any female applicant for employment, without making a reasonable effort to investigate the character of the employer. Nor shall any such licensed person send any female as an entertainer or performer to any place where such female will be required or permitted to sell, offer for sale or solicit the sale of intoxicating liquors to those present or assembled as an audience or otherwise in such place or in any rooms or buildings adjacent thereto. No licensed person shall knowingly permit any persons of bad character,

[7] P. H. L. 249a.

prostitutes, gamblers, intoxicated persons or procurers to frequent such agency. No licensed person shall accept any application for employment made by or on behalf of any child or shall place or assist in placing any such child in any employment whatever in violation of article twenty of the education law, relating to compulsory education, and in violation of the labor law. No licensed person, his agents, servants or employees shall induce or compel any person to enter such agency for any purpose, by the use of force or by taking forcible possession of said person's property. No person shall procure or offer to procure help or employment in rooms or on premises where intoxicating liquors are sold to be consumed on the premises whether or not dues or a fee or privilege are exacted, charged or received directly or indirectly, except in office buildings in which are located cafés and restaurants. For the violation of any of the foregoing provisions of this section the penalties shall be a fine of not less than twenty-five dollars, and not more than two hundred and fifty dollars, or imprisonment for a period of not more than one year, or both, at the discretion of the court.[1]

Any person, firm, association or corporation, or any employee or agent thereof, who makes to any person furnishing or seeking employment any statement which is false, knowing the same to be false, in regard to any employment, work or situation, its nature, location, duration, wages, or salary attached thereto, or the circumstances surrounding the said employment, work, or situation, or who shall offer or hold himself out as in a position to secure or furnish employment without having an order therefor or such employment to be filled or shall misrepresent any other material matter in connection with said employment, work, or situation, and by reason of such statement, offer, holding out or misrepresentation, any person shall seek the employment, work or situation, in respect to which such statement, offer, holding out or misrepresentation was made, shall be guilty of a misdemeanor.[2]

Intoxication.

Any person intoxicated in a public place may be arrested without warrant while so intoxicated, and be taken before a magistrate. . . .[3]

The section further provides that if the charge is sustained such person shall be (1) released on probation for a period not exceeding a year and may be fined ten dollars in addition, (2) may be fined ten dollars or imprisoned for not exceeding six months, or both, or (3) committed to a hospital or industrial colony as provided in G.M.L. 139a.[4]

For industrial colony see State Farms, page 99.

1 G. B. L. 190.
2 P. L. 950.
3 P. L. 1221.
4 See Laws 1911, Chap. 700; I. C. C. A. 88-a; Charter 693.

No act committed by a person while in a state of voluntary intoxication, shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act.[3]

But when intoxication results in a fixed mental disease of some continuance and duration, it may relieve from criminal responsibility.[4]

Letters.

Any person who, knowing the contents thereof, sends, delivers, or in any manner causes to be sent, or received any letter or other writing threatening to do any unlawful injury to the person or property of another, or any person who shall knowingly send or deliver or shall make and for the purpose of being delivered or sent, shall part with the possession of any letter, postal card or writing with or without a name subscribed thereto or signed with a fictitious name or with any letter, mark or other designation, with intent thereby to cause annoyance to any person, is guilty of misdemeanor.[5]

In the various cases, in which the sending of a letter is made criminal by this chapter, the offense is deemed complete from the time when such letter is deposited in any post-office or other place, or delivered to any person, with the intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it is received by the person to whom it is addressed.[6]

Marriage.

A person who by force, menace or duress, compels a woman against her will to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment for a term not exceeding ten years, or by a fine of not more than one thousand dollars, or by both.[7]

No conviction can be had for compulsory marriage upon the testimony of the female compelled, unsupported by other evidence.[8]

A minister or magistrate who solemnizes a marriage when either of the parties is known to him to be under the age of legal consent, or to be an idiot or insane person, or a marriage to which within his knowledge a legal impediment exists, is

3 P. L. 1220.
4 People v. Lonergan, 6 Park. 209.
5 P. L. 551.
6 P. L. 550.
7 P. L. 532.
8 P. L. 533.

guilty of a misdemeanor. Until a marriage has been dissolved or annulled by a proper tribunal or court of competent jurisdiction, any person who shall assume to grant a divorce, in writing, purporting to divorce husband and wife and permitting them or either of them to lawfully marry again, shall be guilty of a misdemeanor punishable by fine for the first offense not exceeding five hundred dollars, and for the second offense one thousand dollars, or imprisonment not exceeding one year, or both such fine and imprisonment.[3]

The legal age of consent is eighteen years.[4]

A person who falsely personates another, and, in such assumed character:

1. Marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of the latter; . . .

Is punishable by imprisonment in a state prison for not more than ten years.[5]

A woman who lives with a married man and falsely holds herself out as his wife does not come within the provisions of this section.[6]

An indictment cannot be found, for the crime specified in subdivision first of the last section, except upon the complaint of the person injured if there be any such person living, and within two years after the perpetration of the crime.[7]

INCESTUOUS AND VOID MARRIAGES.

A marriage is incestuous and void whether the relatives are legitimate or illegitimate between either:

1. An ancestor and a descendant;
2. A brother and sister of either the whole or the half blood;
3. An uncle and niece or an aunt and nephew.

If a marriage prohibited by the foregoing provisions of this section be solemnized it shall be void, and the parties thereto shall each be fined not less than fifty nor more than one hundred dollars and may, in the discretion of the court in addition to said fine, be imprisoned for a term not exceeding six months. Any person who shall knowingly and wilfully solemnize such marriage, or procure or aid in the solemnization of the same, shall be deemed guilty of a misdemeanor and shall be fined or imprisoned in like manner.[8]

A marriage is absolutely void if contracted by a person whose husband or wife by a former marriage is living, unless either:

(1) Such former marriage has been annulled or has been dissolved for a cause other than the adultery of such person: provided, that if such former marriage has been dissolved for the cause

3 P. L. 1450.
4 See D. R. L. 7, page 60.
5 P. L. 928.
6 Hodecker v. Strickler, 20 A. D. 245.
7 P. L. 929.
8 D. R. L. 5.

of the adultery of such person, he or she may marry again in the cases provided for in section eight of this chapter [infra] and such subsequent marriage shall be valid;

(2) Such former husband or wife has been finally sentenced to imprisonment for life;

(3) Such former husband or wife has absented himself or herself for five successive years then last past without being known to such person to be living during that time.[9]

A marriage is void from the time its nullity is declared by a court of competent jurisdiction of either party thereto:

(1) Is under the age of legal consent, which is eighteen years;

(2) Is incapable of consenting to a marriage for want of understanding;

(3) Is incapable of entering into the married state from physical cause;

(4) Consents to such marriage by reason of force, duress or fraud;

(5) Has a husband or wife by a former marriage living, and such former husband or wife has absented himself or herself for five successive years then last past without being known to such party to be living during that time.[10]

Whenever a marriage has been or shall be dissolved, the complainant may marry again during the lifetime of the defendant. But a defendant for whose adultery the judgment of divorce has been granted in this state may not marry again during the lifetime of the complainant, unless the court in which the judgment of divorce was rendered shall in that respect modify such judgment, which modification shall be made only upon satisfactory proof that five years have elapsed since the decree of divorce was rendered, and that the conduct of the defendant since the dissolution of said marriage had been uniformly good; and a defendant for whose adultery the judgment of divorce has been rendered in another state or country may not marry again in this state during the lifetime of the complainant unless five years have elapsed since the rendition of such judgment and there is no legal impediment, by reason of such judgment, to such marriage in the state or county where the judgment was rendered. But this section shall not prevent the remarriage of the parties to an action for divorce.[11]

The marriage must be solemnized by either:

1. A clergyman or minister of any religion, or by the leader, or any of the three assistant leaders, of the Society for Ethical Culture in the city of New York, having its principal office in the borough of Manhattan, or by the leader of the Society for Ethical Culture in the borough of Brooklyn of the city of New York;

2. A mayor, recorder, alderman, city magistrate, police justice or police magistrate of a city, except that in cities which contain more than one hundred thousand and less than one million inhabitants, a marriage shall be solemnized by the mayor, or police justice, and by no other officer of such city, except as provided in subdivisions one and three of this section;

3. A justice or judge of a court of record, or of a municipal court, a police justice of a village, or a justice of the peace; except that justices of the peace in cities which contain more than one hundred thousand and less than one million inhabitants, shall have no power to solemnize marriages; or,

9 D. R. L. 6.
10 D. R. L. 7.
11 D. R. L. 8.

4. A written contract of marriage signed by both parties and at least two witnesses who shall subscribe the same, stating the place of residence of each of the parties and witnesses and the date and place of marriage, and acknowledged by the parties and witnesses in the manner required for the acknowledgment of a conveyance of real estate to entitle the same to be recorded, provided, however, that all of such contracts of marriage must in order to be valid be acknowledged before a judge of a court of record. Such contract shall be recorded within six months, after its execution in the office of the clerk of the county in which the marriage was solemnized. . . .[12]

No particular form or ceremony is required when a marriage is solemnized as herein provided by a clergyman or a magistrate, but the parties must solemnly declare in the presence of a clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife. In every case, at least one witness beside the clergyman or magistrate must be present at the ceremony.

The preceding provisions of this chapter, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among the people called friends or quakers; nor marriages among the people of any other denominations having as such any particular mode of solemnizing marriages; but such marriage must be solemnized in the manner heretofore used and practiced in their respective societies or denominations, and marriages so solemnized shall be as valid as if this article had not been enacted.[13]

It shall be necessary for all persons intending to be married to obtain a marriage license from the town or city clerk of the town or city in which the woman to be married resides and to deliver said license to the clergyman or magistrate who is to officiate before the marriage can be performed. If the woman or both parties to be married are nonresidents of the state such license shall be obtained from the clerk of the town or city in which the marriage is to be performed; or, if the woman to be married resides upon an island located not less than fifty miles from the office or residence of the town clerk of the town of which such island is a part, and such office or residence is not on such island such license may be obtained from any justice of the peace residing on such island, and such justice, in respect to powers and duties relating to marriage licenses, shall be subject to the provisions of this article governing town clerks and shall file all statements or affidavits received by him while acting under the provisions of this section with the town clerk of such town.[14]

Any person who shall in any affidavit or statement required or provided for in this article wilfully and falsely swear in regard to any material fact as to the competency of any person for whose marriage the license in question or concerning the procuring or issuing of which such affidavit or statement may be made shall be deemed guilty of perjury and on conviction thereof shall be punished as provided by the statutes of this state.[15]

If any clergyman or other person authorized by the laws of this state to perform marriage ceremonies shall solemnize or presume to solemnize any marriage between any parties without a license being presented to him or them as herein provided or with knowledge that either party is legally incompetent to contract matrimony as is provided for in this article he shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not less than

12 D. R. L. 11.
13 D. R. L. 12.
14 D. R. L. 13.
15 D. R. L. 16.

fifty dollars nor more than five hundred dollars or by imprisonment for a term not exceeding one year.[16]

The provisions of this article pertaining to the granting of licenses before a marriage can be lawfully celebrated apply to all persons who assume the marriage relation in accordance with subdivision 4 of section 11 of this chapter. Nothing in this article contained shall be construed to render void by reason of a failure to procure a marriage license any marriage solemnized between persons of full age nor to render void any marriage between minors or with a minor under the legal age of consent where the consent of parent or guardian has been given and such marriage shall be for such cause voidable only as to minors or a minor upon complaint of such minors or minor or of the parent or guardian thereof.[17]

Midwives.

No person other than a licensed physician shall practice midwifery in the city of New York without a permit therefor issued by the board of health or otherwise than in accordance with the terms of said permit and with the regulations of said board.[1]

See also Records of Births, Marriages, etc., page 63.

Physical Examination of Female Employees.

Whenever an employer shall require a physical examination by a physician or surgeon as a condition of employment, the party to be examined, if a female, shall be entitled to have such examination before a physician or surgeon of her own sex. If an employer shall require or attempt to require a female applicant for employment to submit to an examination in violation of the provisions of this section, he shall be guilty of a misdemeanor.[2]

Prevention of Procreation.

It shall be the duty of the said board [of examiners of feebleminded, criminals and other defectives] **to examine into the mental and physical condition and the record and family history of the feeble-minded, epileptic, criminal and other defective inmates confined in the several state hospitals for the insane, state prisons, reformatories and charitable and penal institutions in the state, and if in the judgment of the majority of said board procreation by any such person would produce children with an inherited tendency to crime, insanity, feeblemindedness, idiocy, or imbecility and there is no probability that the condition of any such person so examined will improve to such an extent as to render procreation by any such person advisable, or if the physical or mental condition of any such person will be substantially improved thereby, then said board shall appoint one of its members to perform such operation for**

16 D. R. L. 17.
17 D. R. L. 25.
1 Sanitary Code 196.
2 L. L. 22.

the prevention of procreation as shall be decided by said board to be most effective.

The criminals who shall come within the operation of this law shall be those who have been convicted of the crime of rape or of such succession of offenses against the criminal law as in the opinion of the board shall be deemed to be sufficient evidence of confirmed criminal tendencies.[1]

The board of examiners shall apply to any judge of the supreme court or county judge of the county in which said person is confined, for the appointment of counsel to represent the person to be examined. Said counsel to act at a hearing before the judge and in any subsequent proceedings and no order made by said board shall become effective until five days after it shall have been filed with the clerk of the court and a copy shall have been served upon the counsel appointed to represent the person examined and proof of service of said copy of the order to be filed with the clerk of the court. All orders made under the provisions of this act shall be subject to review by the supreme court or any justice thereof, and said court may upon appeal from any order grant a stay which shall be effective until such appeal shall have been decided. The judge of the court appointing any counsel under this act may fix the compensation to be paid him. No surgeon performing an operation under the provisions of this act shall be held to account therefor. The record taken upon the examination of every such inmate signed by the said board of examiners shall be preserved by the institution where said inmate is confined and one year after the performance of the operation the superintendent or other administrative officer of the institution wherein such inmate is confined shall report to the board of examiners the condition of the inmate and the effect of such operation upon such inmate, and a copy of the report shall be filed with the record of the examination.[2]

Except as authorized by this act, every person who shall perform, encourage, assist in or otherwise permit the performance of the operation for the purpose of destroying the power to procreate the human species or any person who shall knowingly permit such operation to be performed upon such person unless the same shall be a medical necessity, shall be guilty of a misdemeanor.[3]

Records of Births, Marriages and Deaths.

It shall be the duty of the parents of any child born [in New York City] (and if there be no parent alive that has filed such report, then of the next of kin of such child born), and of every person present at such birth, within ten days after such birth, to file a report with the department of health, in writing, stating, so far as known, the date, borough and street number of said birth, and the sex and color of such child, born, and the names, residence, birthplace and age of the parents, the occupation of the father and the maiden name of the mother. It shall also be the duty of physicians and professional midwives to keep a registry of the several births in which they have assisted professionally, which shall contain, as near as can be ascertained, the time of such birth, name, sex, and color of the child, the names, residence, birthplace and age of the parents, occupation of the father and maiden name

1 P. H. L. 351. 2 P. H. L. 352. 3 P. H. L. 353.

of the mother, and file a report of the same within ten days with the department of health.[1]

It shall be the duty of the clergyman, magistrates and other persons who perform the marriage ceremony in the city of New York to keep a registry of the marriages celebrated by them, which shall contain, as near as the same can be ascertained, the name and surname of the parties married; the residence, age and condition of each; whether single or widowed.[2]

For every omission of any person to make and keep the registry of marriages and births required by the preceding sections, and for every omission to file a written copy of the same with said department of health, within ten days after any birth or marriage provided to be registered, and for every omission to file the report of any death, birth or marriage, the person guilty of such omission shall be guilty of a misdemeanor; and in addition thereto, the offender shall also be liable to pay a fine of one hundred dollars, to be recovered in the name of the department of health of the city of New York, before any justice or tribunal in said city having jurisdiction of civil actions. But no person shall be liable for such fine or subject to arrest and imprisonment for not filing the report herein required, if such report has been filed by any other person, or if an excuse is presented to the commissioner of health for such omission which the said commissioner shall decide to be sufficient, in which event the said commissioner of health is hereby empowered to excuse the said omission. In any action hereunder such excuse shall be proved by the party claiming the benefit of the same.[3]

The department of health shall keep a record of the births, marriages and deaths filed with it; the births shall be numbered and recorded in the order in which they are received by it; and the record of births shall state the place and date of birth, the name, sex and color of the child, the names, residence, birthplace and age of the parents, occupation of father and maiden name of mother, as fully as they have been received, and the time when the record was made. The marriages shall be numbered and recorded in the order in which they are received by the department; and the record thereof shall state the date of marriage, name, residence, and official station, if any, of the persons, by whom married, the names and surnames of the parties, age, the color, residence, birthplace, number of marriage and condition of each; whether single or widowed, father's name and mother's maiden name, and maiden name of the bride if a widow, and the time when the record was made. The deaths shall be likewise numbered and recorded; and the record thereof shall state, as far as the same is reported, the date of decease, name and surname, condition, whether single, married or widowed, age, place of birth, place of death, occupation, names and birthplace of the parents, disease, cause of death, color, and last place of residence of such deceased person, and the time when the record was made. Said department shall perform all the duties of this section imposed, as a part of its regular duties, and no fees shall be demanded or received by reason thereof.[4]

Charter 1241 prescribes a method by which birth of children of actual residents of New York City, occurring during the temporary absence of the parents and the birth of children which by neglect were omitted to be recorded, may be recorded.

1 Charter 1237. See also S. C. 31.

2 Charter 1236. See also S. C. 34.

3 Charter 1239.

4 Charter 1240. See also D. R. L. 20.

If any person shall knowingly make to, or file with, said department of health, of any officer thereof, any false return, statement or report relative to any birth, death or marriage, or other matter concerning which a report or return may be legally required of, or should be made by, such person; or if any member, inspector or officer, or any agent of said department of health shall knowingly make to said department of health any false or deceptive report or statement in connection with his duties, or shall accept or receive, or authorize or encourage, or knowingly allow any other person to accept or receive any bribe or other compensation as a condition or an inducement for not faithfully discovering and fully reporting, or otherwise acting, according to his duty in any respect, then any and every such person shall be deemed guilty of a misdemeanor, punishable by imprisonment of not more than one year or by a fine of not more than five hundred dollars and, if an officer or employee of the department, by the forfeiture of his office, rank or position, and shall be liable to be for such crime indicted, tried and punished according to law, and shall, in addition, forfeit all compensation due or to grow due from said department.[5]

Venereal Diseases.

The New York City Board of Health on February 20, 1912, passed the following resolution:

That on and after May 1, 1912, the superintendents or other officers in charge of all public institutions such as hospitals, dispensaries, clinics, homes, asylums, charitable and correctional institutions, including all institutions which are supported in whole or in part by voluntary contributions, be required to report promptly the name, sex, age, nationality, race, marital state and address of every patient under observation suffering from syphilis in every stage, chancroid, or gonorrhœal infection of every kind (including gonorrhœal arthritis), stating the name, character, stage and duration of the infection, the date and source of contraction of the infection, if obtainable, and,

That all physicians be requested to furnish similar information concerning private patients under their care, excepting that the name and address of the patient need not be reported.

That all information and all reports, in connection with persons suffering from these diseases, shall be regarded as absolutely confidential, and shall not be accessible by the public nor shall such records be deemed public records.

That the Department of Health shall provide facilities for the free bacteriological examination of discharges for the diagnosis of gonorrhœal infections, and also shall provide, without charge, vaccines for the treatment of such infections, and

That the Department of Health shall undertake to make,

[5] Charter 1266. See also S. C. 36.

without charge, the Wassermann and Noguchi tests for the diagnosis of syphilis and examine specimens for spirochetes.

That these diagnostic and therapeutic facilities be extended only when the data required for the registration of the case by the physician treating the patient.

That the Department provide and distribute circulars of information in relation to these diseases.

This resolution of the Board of Health was superseded by the following sections of the new Sanitary Code which went into effect in 1915:

It shall be the duty of the manager, superintendent, or person in charge, of any correctional institution and of every public or private hospital, dispensary, clinic, asylum, or charitable institution in the City of New York to report promptly to the Department of Health the name or initials, together with the sex, age, marital state, and address of every occupant or inmate thereof or person treated therein, affected with syphilis or gonorrhœa; and it shall also be the duty of every physician in the said City to promptly make a similar report to the Department of Health relative to any person found by such physician to be affected with syphilis or gonorrhœa. All reports made in accordance with the provisions of this section, and all records of clinical or laboratory examinations indicating the presence of syphilis or gonorrhœa, shall be regarded as confidential, and shall not be open to inspection by the public or by any person other than the official custodian of such reports or records in the Department of Health, the Commissioner of Health, and such other persons as may be authorized by law to inspect such reports or records, nor shall the custodian of any such report or record, the said Commissioner of Health, or any such other person divulge any part of such report or record so as to disclose the identity of the person to whom it relates.[1]

No person who is affected with any infectious disease, or with any venereal disease in a communicable form shall work or be permitted to work in any place where food or drink is prepared, cooked, mixed, baked, exposed, bottled, packed, handled, stored, manufactured, offered for sale, or sold. Whenever required by the Sanitary Superintendent or Director of the Bureau of Food Inspection, of the Department of Health, any person employed in any such place shall submit to a physical examination by a medical inspector of said department. No person who refuses to submit to such examination shall work or be permitted to work in any such place.[2]

1 S. C. 88. 2 S. C. 146.

Weapons.

A person who manufactures, sells or gives a blackjack, slungshot, billy, sandclub, bludgeon, or metal knuckles to any person is guilty of a misdemeanor.[1]

A person who attempts to use against another, or who carries, or possesses, any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, bludgeon, bomb or bombshell, or who, with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any other dangerous or deadly instrument or weapon, is guilty of a felony.

Any person under the age of sixteen years, who shall have, carry, or have in his possession, any of the articles named or described in the last section, which is forbidden therein to offer, sell, loan, lease or give to him, shall be guilty of a misdemeanor.

Any person over the age of sixteen years, who shall have in his possession in any city, village or town of this state, any pistol, revolver or other firearm of a size which may be concealed upon the person, without a written license therefor, shall be guilty of a misdemeanor.

Any person over the age of sixteen years, who shall have or carry concealed upon his person in any city, village, or town of this state, any pistol, revolver, or other firearm without a written license therefor, shall be guilty of a felony.

Any person not a citizen of the United States, who shall have or carry firearms, or any dangerous or deadly weapons in any place, at any time, shall be guilty of a felony, unless authorized by license.[2] . . .

The possession, by any person other than a public officer, of any of the weapons specified in the last section, concealed or furtively carried on the person, is presumptive evidence of carrying, or, concealing, or possessing, with intent to use the same in violation of that section.[3]

No pistol, revolver or other firearms of a size which may be concealed upon the person, shall be sold, or given away, or otherwise disposed of, except to a person expressly authorized. . . .

Any person selling or disposing of such firearm in violation of this provision of this section shall be guilty of a misdemeanor.[4] . . .

This section also provides for dealers keeping a registry of weapons which shall be open for inspection to any peace officer.

See also Charter 353.

Witnesses.

Whenever a judge of a court of record in this state is satisfied, by proof on oath, that a person residing or being in this state is a

1 See P. L. 1896.

2 P. L. 1897. This section has been amended by the legislature of 1915 and after Sept. 1, 1915, the following important changes will be in effect: All of the crimes above mentioned (except of carrying or possessing a bomb or explosive) are made misdemeanors instead of felonies unless the offender has been previously convicted of a crime, in which event he is guilty of a felony, but if the offender is under sixteen years he is guilty of juvenile delinquency instead of a misdemeanor. The amendment also provides for householders and merchants obtaining licenses to possess revolvers in their residences or places of business.

3 P. L. 1898.

4 P. L. 1914.

necessary and material witness for the people in a criminal action or proceeding pending in any of the courts of this state, he may, after an opportunity has been given to such person to appear before such judge and be heard in opposition thereto, order such person to enter into a written undertaking, with such sureties and in such sum as he may deem proper, to the effect that he will appear and testify at the court in which such action or proceeding may be heard or tried, and upon his neglect or refusal to comply with the order for that purpose, the judge must commit him to such place, other than a state prison, as he may deem proper, until he comply or be legally discharged. A judge of a court of record sitting in the county in which such criminal action or proceeding is pending may, when there is no further necessity for the detention of the witness, fix a definite sum of money to be paid to such witness as compensation during the time of his detention. Such sum shall not be greater than the rate of three dollars for each day of actual detention. Such judge if satisfied that the witness so committed is wholly destitute of means or has a family dependent upon him for support or for other sufficient reason may in his discretion while such witness is detained, by order, fix a sum not greater than one-half of the rate aforesaid for the actual number of days detained at the time of making such order, to be forthwith paid to the witness during the pendency of the action or proceeding as partial compensation. Any such sum or sums so advanced to the witness during his detention shall be deducted from the amount of compensation finally fixed. Such judge is hereby authorized further to make any of the orders hereinbefore provided for in any case where the witness has been committed by either a coroner or a magistrate. Any sum of money directed to be paid as herein provided shall be paid by the county treasurer of the county upon filing with him a certified copy of the order fixing the whole or partial amount of compensation herein provided for; and where the amount of compensation is finally fixed, a certified copy of the order discharging the witness from custody. For the purpose of compelling the attendance of any person before him to show cause why he should not be required to enter into such an undertaking to appear as a witness or be committed in default thereof, such judge may at any time upon the proof on oath required as hereinbefore set forth, make an order in the nature of an attachment requiring such person forthwith, or at such time as may be fixed therein, to appear before such judge. Disobedience of such order shall be punishable as for a contempt of court.[1]

1 Crim. P. 618-b. In effect September 1st, 1915.

CHAPTER III

PROVISIONS AFFECTING CHILDREN

Impairing Morals and Health.

A person who:

1. Wilfully causes or permits the life or limb of any child actually or apparently under the age of sixteen years to be endangered, or its health to be injured, or its morals to become depraved; or,

2. Wilfully causes or permits such child to be placed in such a situation or to engage in such an occupation that its life or limb is endangered, or its health is likely to be injured, or its morals likely to be impaired,

Is guilty of a misdemeanor.[1]

A person who:

1. Admits to or allows to remain in any dance house, public pool or billiard room, public bowling alley, concert saloon, theatre, museum, skating rink, kinetoscope or moving picture performance, or in any place where wines or spirituous or malt liquors are sold or given away, or in any place of entertainment injurious to health or morals, owned, kept, leased, managed or controlled by him or by his employer, or where such person is employed or performs such services as door-keeper or ticket-seller or ticket-collector, any child actually or apparently under the age of sixteen years, unless accompanied by its parent or guardian, or unless such theatrical performance, kinetoscope or moving picture exhibition or other entertainment is given under the auspices, or for the benefit of any school or church or educational or religious institution, not operated for profit, or,

2. Suffers or permits any such child to play any game of skill or chance in any such place, or in any place adjacent thereto, or to be or remain therein, or admits to or allows to remain in any reputed house of prostitution or assignation, or in any place where opium or any preparation thereof is smoked, any child actually or apparently under the age of sixteen years; or,

3. Sells or gives away, or causes or permits or procures to be sold or given away to any child actually or apparently under the age of sixteen years, any beer, ale, wine, or any strong or spirituous liquor; or,

4. Being a pawnbroker or person in the employ of a pawn-

[1] P. L. 483.

broker, makes any loan or advance or permits to be loaned or advanced to any child actually or apparently under the age of sixteen years any money, or in any manner directly or indirectly receives any goods, chattels, wares or merchandise from any such child in pledge for loans made or to be made to it or to any other person or otherwise howsoever; or,

5. Sells, pays for or furnishes any cigar, cigarette or tobacco in any of its forms to any child actually or apparently under the age of sixteen years; or,

6. Being the owner, keeper or proprietor of a junk shop, junk cart or other vehicle or boat or other vessel used for the collection of junk, or any collector of junk, receives or purchases any goods, chattels, wares or merchandise from any child under the age of sixteen years,

Is guilty of a misdemeanor.

It shall be no defense to a prosecution for a violation of subdivisions three, four, five or six of this section, that in the transaction upon which the prosecution is based the child acted as the agent or representative of another, or that the defendant dealt with such child as the agent or representative of another.[2]

By "guardian" in subd. 1 is meant, not legal guardian but any proper custodian as neighbor, brother, sister, etc.[3]

A person who employs or causes to be employed, or who exhibits, uses, or has in custody, or trains for the purpose of the exhibition, use or employment of, any child actually or apparently under the age of sixteen years; or who having the care, custody or control of such a child as parent, relative, guardian, employer or otherwise, sells, lets out, gives away, so trains, or in any way procures or consents to the employment, or to such training, or use, or exhibition of such child; or who neglects or refuses to restrain such child from such training, or from engaging or acting; . . .

4. In any illegal, indecent or immoral exhibition or practice; or in the exhibition of any such child when insane, idiotic, or when presenting the appearance of any deformity or unnatural physical formation or development; or,

5. In any practice or exhibition or place dangerous or injurious to the life, limb, health or morals of the child.[4]

A corporation or person employing messenger boys who:

1. Knowingly places or permits to remain in a disorderly house, or in an unlicensed saloon, inn, tavern or other unlicensed place where malt or spirituous liquors or wines are sold, any instrument or device by which communication may be had between such disorderly house, saloon, inn, tavern or unlicensed place, and any office or place of business of such corporation or person; or,

2 P. L. 484. See also C. O., Chap. 14, § 42, 122.

3 People v. Samwick, 127 A. D. 209.

4 P. L. 485.

2. Knowingly sends or permits any person to send any messenger boy to any disorderly house, unlicensed saloon, inn, tavern or other unlicensed place, where malt or spirituous liquors or wines are sold, on any errand or business whatsoever except to deliver telegrams at the door of such house,

Is guilty of a misdemeanor, and incurs a penalty of fifty dollars to be recovered by the district attorney.[5]

It shall not be lawful for any owner, lessee, manager, agent or officer of any theatre in the city of New York to admit to any theatrical exhibition held in the evening, any minor under the age of fourteen years, unless such minor is accompanied by, and is in the care of, some adult person. Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be liable to a fine of not less than twenty-five dollars nor more than one hundred dollars, or imprisonment for a term not less than ten nor more than ninety days for each offense. . . .[6]

Disorderly and Destitute.

Any child actually or apparently under the age of sixteen years who is found:

1. Begging or receiving or soliciting alms, in any manner or under any pretense; or gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or,

2. Not having any home or other place of abode or proper guardianship; or who has been abandoned or improperly exposed or neglected, by its parents or other person or persons having it in charge, or being in a state of want or suffering; or,

3. Living or having lived with or in custody of a parent or guardian who has been sentenced to imprisonment for crime, or who has been convicted of a crime against the person of such child, or has been adjudged an habitual criminal; or,

4. Frequenting or being in the company of reputed thieves or prostitutes, or in a reputed house of prostitution or assignation, or living in such a house either with or without its parent or guardian, or being in concert saloons, dance houses, theaters, museums or other places of entertainment, or places where wines, malt or spirituous liquors are sold, without being in charge of its parent or guardian; or playing any game of chance or skill in any place wherein or adjacent to which any beer, ale, wine or liquor is sold or given away, or being in any such place; or,

5. Coming within any of the descriptions of children mentioned in section 485,

Must be arrested and brought before a proper court or magistrate, who may commit the child to any incorporated charitable reformatory, or other institution, and when practicable, to such as is governed by persons of the same religious faith as the parents of the child, or may make any disposition of the child

[5] P. L. 488. [6] Charter 1482.

such as now is, or hereafter may be authorized in the cases of vagrants, truants, paupers or disorderly persons, but such commitment shall, so far as practicable, be made to such charitable or reformatory institutions. . . .

If it shall appear to the board of managers, trustees or other officers in charge of said incorporated charitable, reformatory or other institution to which any such child has been so committed that said child be incorrigible and that his or her presence therein is seriously detrimental to the welfare of the institution and other children therein, an application may be made to the court or magistrate who committed the said child to said institution, or to a justice of the supreme court in the judicial district in which said institution is located, for an order transferring said child to another incorporated charitable reformatory or other institution, governed or controlled by persons of the same religious faith as the parents of the said child, when practicable, said institution or reformatory to be one designated by the state board of charities for the receipt and detention of such incorrigible children. . . .

7. All children actually or apparently under the age of sixteen who desert their homes without good or sufficient cause, or keep company with dissolute, immoral or vicious persons, shall be deemed disorderly children. Those actually or apparently under the like age who are not susceptible of proper restraint or control by their parents, guardians, or lawful custodians, or who are habitually disobedient to their reasonable and lawful commands, shall be deemed ungovernable children. A disorderly or ungovernable child may be dealt with as provided in the fifth subdivision of this section.

8. Any magistrate having criminal jurisdiction may commit, temporarily, to an institution authorized by law to receive children on final commitment, and to have compensation therefor from the city or county authorities, any child under the age of sixteen years, who is held for trial on a criminal charge; and may, in like manner, so commit any such child held as a witness to appear on the trial of any criminal case. . . . Any such child convicted of any misdemeanor shall be finally committed to some such institution, and not to any prison or jail or penitentiary, longer than is necessary for its transfer thereto. No child under restraint or conviction, actually or apparently under the age of sixteen years, shall be placed in any prison or place of confinement, or in any court room, or in any vehicle for transportation in company with adults charged with or convicted of crime.

9. Whenever any child is brought before any court or magistrate, to be dealt with under any of the subdivisions of this section, instead of committing such child to confinement in any institution, the court or magistrate may place such child under the custody of a probation or parole officer, and at any time within one year thereafter such court or magistrate, may issue a warrant for such child, and after giving such child an oppor-

tunity to be heard, may make the commitment which could have been made in the first instance as aforesaid. The foregoing provision shall not apply to a children's court created by special enactment in cities of the first class, but this exception shall not be construed as taking away or limiting any jurisdiction now possessed by such children's courts. If at any time during the proceedings it shall seem to the magistrate that any child brought before him under any of the subdivisions of this section, appears to be feeble-minded, he may cause the child to be examined by two physicians of at least five years' experience in the treatment of mental disease, and on the written statement of the two examining physicians that in their opinion the child is feeble-minded, he may commit him to a public instituton for the feeble-minded, and such child shall be detained therein until duly discharged by direction of the board of managers thereof.[1]

All children under the age of sixteen deserting their homes without good and sufficient cause, or keeping company with dissolute or vicious persons against the lawful commands of their fathers, mothers, guardians, or other persons standing in the place of a parent, shall be deemed disorderly children.[2]

Upon complaint made on oath to any police magistrate against any child within said county under the age of sixteen, by his or her parent or guardian, or other person standing to him or her in place of a parent, as being disorderly, such magistrate or justice shall issue his warrant for the apprehension of the offender, and cause him or her to be brought before himself or any other police magistrate for examination. If such magistrate be satisfied by competent testimony that such person is a disorderly child within the description aforesaid, he shall make up and sign a record of conviction thereof, and he shall by warrant under his hand commit such person to the house of refuge, and the powers and duties of the said managers in relation to the said children shall be the same in all things as are prescribed as to other juvenile delinquents received by them; provided, however, that any person committed under this section shall have the same right of appeal secured by law to persons convicted of criminal offense; but on any such appeal mere informality in the issuing of any warrant shall not be held to be sufficient cause for granting a discharge.[3]

All male children under the age of sixteen in the several counties which now are or hereafter shall be designated by law as the counties from which juvenile delinquents shall be sent to the house of refuge in the city of New York, deserting their homes without good and sufficient cause, or keeping company with dissolute or vicious persons against the lawful commands

1 P. L. 486. That part of subdivision 9 which applies to feeble-minded children is new and does not go into effect until Sept. 1, 1915.

2 Laws of 1865, Chap. 172, as amended by Laws of 1882, Chap. 410, sec. 1597, expressly continued in force by Charter 668.

3 Laws of 1865, Chap. 172, as amended by Laws of 1882, Chap. 410, sec. 1597, expressly continued in force by Charter 668.

of their fathers, mothers, guardians or other persons standing in the place of a parent, shall be deemed disorderly children.[4]

Upon complaint made on oath to any police magistrate or justice of the peace against any child within his county, under the age of sixteen, by his parent or guardian, or other person standing to him in place of a parent, as being disorderly, such magistrate or justice shall issue his warrant for the apprehension of the offender, and cause him to be brought before himself or any other police magistrate or justice of the said county for examination.[5]

If such magistrate or justice be satisfied by competent testimony that such person is a disorderly child within the description aforesaid, he shall make up and sign a record of conviction thereof, and shall by warrant under his hand commit such person to the house of refuge established by the managers of the society for the reformation of juvenile delinquents in the city of New York, and the powers and duties of the said managers in relation to the said children shall be the same in all things as are prescribed as to other juvenile delinquents received by them; provided, however, that any person committed under this section shall have the same right of appeal now secured by law to persons convicted of criminal offense; but on any such appeal mere informality in the issuing of any warrant shall not be held to be sufficient cause for granting a discharge.[6]

The managers of the Society for the Reformation of Juvenile Delinquents in the city of New York shall have power, in their discretion, to receive and take into the house of refuge established by them, all such children who shall be taken up or committed as vagrants, or convicted of criminal offenses, in the said city, as may, in the judgment of the court of general sessions of the peace, or of the court of oyer and terminer in and for the said city, or of the jury before whom any such offender shall be tried, or of the police magistrates, or of the commissioners of charities and correction, be proper objects; and the said managers shall have power to place the said children committed to their care, during the minority of such children, at such employments, and to cause them to be instructed in such branches of useful knowledge, as shall be suitable to their years and capacities; and they shall have power, in their discretion, to bind out the said children, with their consent, as apprentices or servants, during their minority, to such persons, and at such places, to learn such proper trades and employments as in their judgment will be most for the reformation and amendment, and the future benefit and advantage of such children.[7]

4 S. C. L. 186.

5 S. C. L. 187.

6 S. C. L. 188.

7 L. 1865, Chap. 172, as amended by L. 1882, Chap. 410, sec. 1594, expressly continued in force by Charter 668. L. 1902, Chap. 489, as amended by L. 1907, Chap. 218, empowers the Jewish Protectory and Aid Society to receive male and female children between the ages of five and sixteen years who

No justice of the peace, board of charities, police justice, or other magistrate, or court, shall commit any child under sixteen years of age, as a vagrant, truant, or disorderly person, to any jail or county almshouse, but to some reformatory, or other institution, as provided for in the case of juvenile delinquents. . . When any such child is committed to an orphan asylum or reformatory, it shall, when practicable, be committed to an asylum or reformatory that is governed or controlled by persons of the same religious faith as the parents of such child. . . . [8]

Whenever any female not over the age of sixteen years shall be brought before any court or committing magistrate, and it shall appear to the satisfaction of such court or magistrate by the confession of such female, or by competent testimony, that such female frequents reputed houses of prostitution or assignation, or frequents the company of thieves or prostitutes or is found associating with vicious and dissolute persons or is wilfully disobedient to parent or guardian, and is in danger of becoming morally depraved; or is of intemperate habits, or is a vagrant or is guilty of any criminal offense, and who is not insane, nor mentally or physically incapable of being substantially benefited by the training and discipline of such institution, she may be sentenced and committed to the New York State Training School for Girls, or placed in charge of the board of managers thereof, to be there confined under the provisions of law relating to such institution, but no person under the age of twelve years shall be committed to such institution for any crime or offense less than a felony, and no commitment made under this section which shall recite the facts upon which it is based, shall be deemed or held to be invalid by reason of any imperfection or defect in form. No person shall be committed to such institution nor placed in the charge of the board of managers thereof for a definite term, but any such person may be paroled or discharged at any time after her commitment, by the board of managers of such institution. Any such female under the age of fifteen years when so committed or placed in charge of the board of managers of said school, shall not be retained therein for a longer period than until she becomes of the age of eighteen; and such females, fifteen years of age or over, when so committed, shall not be detained for a period longer than three years from the time of such commitment. Every such female shall continue to be a ward of such institution until she becomes of the age of twenty-one years, notwithstanding her parole or discharge therefrom, and it shall be the duty of said board of managers to continue to exercise over her such control as may be necessary for her welfare during her said minority as a ward of said institution; and if deemed by said board of managers necessary for her welfare or for her

have been committed pursuant to P. L. 486 and 2194, q.v. under sentence.

[8] Poor L. 56.

protection of evil associations or companionship, said board may return her temporarily to said institution at any time during her said minority. If any such female shall marry during her said minority such wardship shall thereupon terminate. . . .[9]

For further commitment of children see under Disorderly Conduct and Prostitution, pp. 16, 17; Commitment and Sentence, pp. 89, 90.

Juvenile Delinquency.

1. A parent, guardian or other person having custody of a child actually or apparently under sixteen years of age, who omits to exercise reasonable diligence in the control of such child to prevent such child from becoming guilty of juvenile delinquency as defined by statute, or from becoming adjudged by a children's court in need of the care and protection of the state as defined by statute, or who permits such a child to associate with vicious, immoral or criminal persons, or to grow up in idleness, or to beg or solicit alms, or to wander about the streets of any city, town or village late at night without being in any lawful business or occupation, or to furnish entertainment for gain upon the streets or in any public place, or to be an habitual truant from school, or to habitually wander around any railroad yard or tracks, to enter any house of prostitution or assignation, or any place where gambling is carried on, or any gambling device is operated, or any policy shop, or to enter any place where the morals of such child may be endangered or depraved or may be likely to be impaired, and any such person or any other person who knowingly or wilfully is responsible for, encourages, aids, causes, or connives at, or who knowingly or wilfully does any act or acts to produce, promote or contribute to the conditions which cause such child to be adjudged guilty of juvenile delinquency, or to be in need of the care and protection of the state, or to do any of the acts hereinbefore enumerated, shall be guilty of a misdemeanor. . . .

3. Whenever a person is convicted of the misdemeanor hereinbefore defined and sentence is suspended the court may place the defendant upon probation for a period of not more than one year; provided that the court may cause the defendant to give a bond to the people of the state of New York, with or without sureties, in a sum not to exceed five hundred dollars. . . . The magistrate who presided at the trial, or his successor, if he is satisfied that the defendant has violated the terms and conditions of probation and bond, if any, may at any time revoke and cancel the suspension of sentence and probation and impose sentence. . . .

5. Original and exclusive jurisdiction of all proceedings, investigations and trials instituted under this act is limited to courts of special sessions, police and city courts presided over

[9] S. C. L. 204.

by magistrates who hold or are assigned to children's courts, except in the city of New York, where jurisdiction is hereby conferred upon and shall be exercised by the city magistrates.[1]

Feeble-minded and Defective.

Whenever it shall appear to the justice sitting in the children's court at any stage of a proceeding pending before him that there is reason to believe that a child arraigned before the court is mentally defective, he may direct a mental examination of such child by one or more physicians, . . . to determine whether such a child is mentally defective. The physician or physicians so designated shall submit to the court before the final disposition of the case, a written report setting forth the results of such examination and the report so rendered shall be made part of the records of the court. If by such report the child is declared to be mentally defective or feeble-minded, the justice shall make such other or further investigation in the premises as he may deem proper, and if he shall determine that the child is mentally defective, he may commit the child to a public institution of the state or city of New York duly authorized by law to receive and care for mentally defective and feeble-minded persons there to be detained until discharged or transferred in due course of law. No such order or determination shall be made, however, without the consent of the parent, guardian, or person in parental relation having custody of such child, unless upon like notice and like opportunity to be heard as is required for a commitment under section 486 of the penal law [page 71] . . .[2]

Abandonment.

A parent or other person charged with the care or custody for nurture or education of a child under the age of sixteen years, who abandons the child in destitute circumstances and wilfully omits to furnish necessary and proper food, clothing or shelter for such child is guilty of felony; punishable by imprisonment for not more than two years, or by a fine not to exceed one thousand dollars, or by both. In case a fine is imposed the same may be applied in the discretion of the court to the support of such child. Proof of the abandonment of such child in destitute circumstances and omission to furnish necessary and proper food, clothing or shelter is prima facie evidence that such omission is wilful. The provisions of section twenty-four hundred and forty-five prohibiting the disclosure of confidential communications between husband and wife shall not apply to prosecutions for the offense here defined. A previous conviction of felony or misdemeanor shall not prevent the court from suspending sentence upon a conviction under this section, or from arbitrarily fixing the limit of imprisonment or fine, in case imprisonment or fine is imposed upon conviction herein. . . .[3]

1 P. L. 494. 2 I. C. C. A. 39-a. 3 P. L. 480.

A father lawfully leaving his wife and family and providing for them, who subsequently discontinues all provisions for their support is guilty and the refusal of his wife to live with him is no defense.[2] In order to constitute the crime of abandonment, both abandonment in destitute circumstances and failure to provide must exist, though the act of leaving and failure to provide need not coincide as to time. So, it has also been held that where a husband deserts a wife and infant child who continue to live in an eight room house nicely furnished with all necessary comforts and food an indictment will not lie. Nor will it in a case of a man who abandons his wife and her illegitimate child unless it is affirmatively proved that he is the father of the child.[3] A putative father of an illegitimate child is not liable to punishment under this section.[4]

A parent, or other person having the care or custody, for nurture or education, of a child under the age of fourteen years, who deserts the child in any place, with intent wholly to abandon it, is punishable by imprisonment in a state prison for not more than seven years.[5]

A father who leaves his children with his wife after a quarrel is not guilty under this section.[6]

A person who:

1. Wilfully omits, without lawful excuse, to perform a duty by law imposed upon him to furnish food, clothing, shelter or medical attendance to a minor, or to make such payment toward its maintenance as may have been required by the order of a court or magistrate when such minor has been committed to an institution; or,

2. Not being a superintendent of the poor, or a superintendent of almshouses, or an institution duly incorporated for the purpose, without having first obtained a license in writing so to do from the board of health of the city or town wherein such females or children are received, boarded or kept, erects, conducts, establishes or maintains any maternity hospital, lying-in asylum where females may be received, cared for or treated during pregnancy, or during or after delivery; or receives, boards or keeps any nursing children, or any children under the age of twelve years not his relatives, apprentices, pupils or wards without legal commitment; or,

3. Being a midwife, nurse or other person having the care of an infant within the age of two weeks neglects or omits to report immediately to the health officer or to a legally qualified practitioner of medicine of the city, town or place where such

2 People v. Quigley, 75 Misc. 151.

3 People v. Lewis, 132 A. D. 256; People v. Smith, 88 Misc. 136; People v. Connell, 151 A. D. 943.

4 People v. Fitzgerald, 167 A. D. 85.

5 P. L. 481.

6 People v. Joyce, 112 A. D. 717; aff'd, 189 N. Y. 518.

child is being cared for, the fact that one or both eyes of such infant are inflamed or reddened whenever such shall be the case, or who applies any remedy therefor without the advice, or except by the direction of such officer or physician; or,

4. Neglects, refuses or omits to comply with any provisions of this section, or violates the provision of such license,

Is guilty of a misdemeanor. . . .[6]

The duty of providing for children devolves upon the mother after the death of the father.[7]

A husband is not bound to support his wife's child by a former marriage.[8]

But any one voluntarily assuming care or custody of a child is amenable to the statute if he fails to perform the duty required, to the injury of the child.[9]

Every person in the city of New York, as constituted by this act, who actually abandons his wife or children without adequate support, or leaves them, or either of them, in danger of becoming a burden upon the public, or who neglects to provide for them, or either of them according to his means, or who threatens to leave his wife and children without adequate support or in danger of becoming a burden upon the public, or who shall have abandoned his wife and children, or either, in any other place and is found in the city of New York, when his wife and children, or either, are residents thereof and are without adequate support, or in danger of becoming a burden upon the public, or who, by reason of his conduct, or of his cruel or inhuman treatment, or by reason of his neglect or refusal to provide for his wife and children, or either, with the necessaries of life, renders it unsafe, improper or impossible for them to live with him, by reason of which they are without adequate support, or in danger of becoming a burden upon the public, is hereby declared a disorderly person.

Upon a complaint made under oath to him against a person as being disorderly, a city magistrate presiding in the domestic relations court for the boroughs of Manhattan and the Bronx and the borough of Brooklyn, and in the other boroughs of the city of New York to a city magistrate thereof presiding in any city magistrate's court therein may issue a warrant for the arrest of the defendant, or, in his discretion, a summons in the form prescribed by section 82 of chapter 659, Laws of 1910,[10] said summons to be served as by said magistrate directed, including mail service, and who, upon his arrest or appearance, shall be arraigned in the manner provided by law. No warrant or summons shall be issued except upon the application of the

6 P. L. 482.

7 Furman v. Van Sise, 56 N. Y. 435.

8 Gay v. Ballou, 4 Wend. 403.

9 Cowley v. People, 83 N. Y. 464.

10 I. C. C. A.

commissioner of public charities, unless for good cause shown the magistrate may issue same if in his discretion he deems it proper so to do.

And if thereupon it shall appear by the confession of the defendant or by competent testimony that he is a disorderly person, the said magistrate shall make an order specifying a fair and reasonable sum of money according to his financial ability, to be paid weekly for the space of one year thereafter by such defendant to the commissioner of public charities for the support of his wife or children or either of them, and may require him to give security by a written undertaking with one or more sureties, approved by the magistrate, to that effect. But in lieu of said undertaking the said defendant may deposit with the clerk of the said court the amount thereof in cash. Said magistrate shall have full power and authority to administer the oath to said principal and surety in said undertaking as to the truth of the statements therein and any justification or statement attached thereto or accompanying the same, and full power and authority to take acknowledgments thereto of any of the parties to the same with like power and effect as if sworn to and acknowledged before a notary public in the county wherein the same may be taken or acknowledged. Any magistrate of the city of New York shall have power to take the security aforesaid with like power and authority as if he made the order aforesaid.

The wife and children, or either of them are hereby declared to be primary beneficiaries of the order, and evidence that they are without means shall be presumptive proof of their liability to become a charge upon the public.

Upon the trial of the hearing of all complaints under this section, the wife shall be a competent witness therein against her husband as to all matters embraced in said complaint.

If a summons be directed to be served by mail by said magistrate, and the party summoned fails to appear, no further proceedings shall be had against said party summoned by mail, until said party is brought into court by warrant or otherwise, or unless he appears in person or by an attorney or counsellor-at-law in said proceeding.

But nothing in this chapter shall apply to or affect an order for the payment of money for the support of a child in an institution, pursuant to the provisions of section 482 of the penal law or of section 921 of the code of criminal procedure.[11]

Where an abandoned wife earned $16 a month and is not in danger of becoming a public charge, her husband cannot be ordered to pay under this section.[12]

Any person can make the complaint against the husband for failure to support his wife.[13]

11 Charter 635.

12 People v. Crouse, 86 A. D. 352.

13 People v. Meyer, 12 Misc. 613.

A husband is not bound to support wife if she is guilty of adultery,[14] or where she has left him without sufficient cause,[15] but if she leaves him for good cause, *e.g.*, because he has infected her with a venereal disease, he may be convicted under this section.[16]

If husband abandons wife in Europe, and she comes to New York City, and he fails to support her and she is liable to become a public charge, he is guilty under this section.[17]

If the undertaking be given, or the cash deposited, the defendant must be discharged. But if not, the city magistrate must convict him as a disorderly person . . . and shall . . . commit the defendant to the workhouse of the city of New York, and to the city prison or jail in the borough where the conviction is had pending his transfer to said workhouse, if necessary, there to remain for a term not exceeding six months in any year or until he shall give the security prescribed. . . .

But the magistrate may, in his discretion, place the defendant on probation in accordance with the provisions of chapter 659, L. 1910. Or said magistrate, in his discretion, shall have power to place said defendant on probation for such time as said magistrate may deem proper, not longer, however, than one year, conditioned that said defendant shall support his said wife and children, or either of them, for such period in a way and manner directed to be done by said magistrate, regard being had to the financial condition and means of livelihood of said defendant. Further, upon the consent of the defendant, the said magistrate may, before or after conviction as aforesaid, place the defendant for a period aggregating not more than one year, under the oversight of a probation officer and adjourn the said proceedings from time to time upon conditions and terms by him deemed proper and meet for the proper support of said wife and children, or either; or may cause the person summoned or arraigned to give an undertaking to the commissioner of public charities of the city of New York for not exceeding one year, with or without surety, in a sum fixed by said magistrate. The condition of such bond shall be that if the obligor shall pay the amount ordered to be paid by said magistrate for the maintenance of said wife, child or children as directed, then said obligation shall be void; otherwise, to remain in full force and virtue.

The magistrate making the order, or the magistrate sitting in the court where the order was made, may, at any time thereafter, upon due notice to the parties, either upon their consent, or for good cause shown, vacate or modify the order and judgment, and may, if the defendant be imprisoned either discharge the defendant absolutely, or place him on probation; or, if the defendant be not imprisoned, may cancel any bond or undertaking given therein.[18]

See also under Disorderly Persons and Vagrants, page 27.

14 People v. Bliskey, 21 Misc. 433.

15 People v. Pettit, 74 N. Y. 320.

16 People v. Palminteri, 119 A. D. 82.

17 People v. Wexler, 152 A. D. 67.

18 Charter 686.

Responsibility for Crimes.

A child under the age of seven years is not capable of committing crime.[1]

A child of the age of seven years, and under the age of twelve years, is presumed to be incapable of crime, but the presumption may be removed by proof that he had sufficient capacity to understand the act or neglect charged against him and to know its wrongfulness.

Whenever in any legal proceedings it becomes necessary to determine the age of a child, the child may be produced for personal inspection, to enable the magistrate, court or jury, to determine the age thereby; and the court or magistrate may direct an examination by one or more physicians, whose opinion shall also be competent evidence upon the question of age. A copy of the record of baptism of any child in any parish register, or register kept in a church, or by a clergyman thereof, or a certificate of baptism duly authenticated by the person in charge of such register, or who administered said baptism, and also a transcript of the record of birth recorded in any bureau of vital statistics or board of health, duly authenticated by its secretary or under its seal, and the entries made in a family Bible, shall also be competent evidence upon the question of age.[2]

Even if child under twelve years pleads guilty, his capacity to commit crime must be affirmatively proven.[3]

Concealing Birth of and Substituting.

A person who endeavors to conceal the birth of a child, by any disposition of the dead body of the child, whether the child died before or after its birth, is guilty of a misdemeanor.[4]

A person, to whom a child has been confided for nursing, education, or any other purpose, who, with intent to deceive a parent, guardian or relative of the child, substitutes or produces to such parent, guardian or relative, another child or person, in place of the child so confided, is punishable by imprisonment in a state prison for not more than seven years.[5]

A person who fraudulently produces an infant, falsely pretending it to have been born of a parent whose child is or would be entitled to inherit real property, or to receive a share of personal property, with intent to intercept the inheritance of such real property, or the distribution of such personal property, or to defraud any person out of the same, or any interest therein; or who, with intent fraudulently to obtain any property, falsely represents himself or another to be a person entitled to an interest or share in the estate of a deceased person, either as executor, administrator, husband, wife, heir, legatee, devisee,

1 P. L. 816.
2 P. L. 817.
3 People v. Domenico, 45 Misc. 309.
4 P. L. 492.
5 P. L. 923.

next of kin, or relative of such deceased person; is punishable by imprisonment in a state prison for not more than ten years.[7]

Bastards.

The father and mother of a bastard are liable for its support.[1]

A bastard is a child who is begotten and born,

1. Out of lawful matrimony;

2. While the husband of its mother was separate from her, for a whole year previous to its birth; or,

3. During the separation of its mother from her husband, pursuant to a judgment of a competent court.[2]

If a woman be delivered of a bastard, or be pregnant of a child likely to be born such, and which is chargeable to a county, city or town, a superintendent of the poor of the county, or an overseer of the poor or the officer of the almshouse of the town or city where the woman is, must apply to a justice of the peace or police justice in the county to inquire into the facts of the case.[3]

In New York City the proceedings are instituted on behalf of the Commissioner of Charities and brought in the Court of Special Sessions, which has exclusive jurisdiction of bastardy proceedings. [See page 116.]

The magistrate must, by the examination of the woman on oath, or any other testimony which may be offered, ascertain the father of the bastard, and must issue his warrant, directed to a peace officer of the county, commanding him, without delay, to apprehend the father and bring him before the justice, for the purpose of having an adjudication as to the filiation of the bastard.[4]

Upon the hearing the magistrates must determine who is the father of the bastard, and must proceed as follows:

. . . If they determine that he is the father they must make an order of filiation, specifying therein the sum to be paid weekly or otherwise, by the defendant, for the support of the bastard, and if the mother be indigent, the sum to be paid by the defendant for her support during her confinement and recovery, and in case said bastard shall die, that the defendant will pay the necessary funeral expenses.[5]

If the defendant be adjudged to be the father, he must immediately pay the amount certified for the costs of the arrest and of the order of filiation, and enter into an undertaking, with sufficient sureties approved by the magistrates, to the effect:

1. That he will pay weekly or otherwise, as may have been

7 P. L. 922.
1 Crim. P. 839.
2 Crim. P. 838.
3 Crim. P. 840.
4 Crim. P. 841.
5 Crim. P. 850. Corroboration of the testimony of the woman is not necessary in such a proceeding.

ordered, the sum directed for the support of the child, and of the mother during her confinement and recovery, or which may be ordered by the county court of the county; and that he will indemnify the county, and town or city, where the bastard was or may be born (as the case may be), and every other county, town or city, which may have been or may be put to expense for the support of the bastard, or of its mother during her confinement and recovery, against those expenses, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the magistrate; or,

2. That he will appear at the next term of the county court of the county, to answer the charge and obey its order thereon, or that the sureties will pay a sum equal to a full indemnity for supporting the bastard and its mother, as provided in the first subdivision of section 844.[6]

Upon compliance with the provisions of the last section, the magistrates must discharge the defendant; but otherwise, they or either of them, must, by warrant, commit him to the county jail, or in the city of New York, to the city prison of that city, until he be discharged by the county court of the county, or deliver an undertaking, as prescribed by section 851.[7]

During the examination and until the defendant is discharged by the magistrate, he must remain in the custody of the officer who arrested him, unless an undertaking have been given for his appearance, as provided in sections 844 and 849; and when committed to prison he must be actually confined therein.[8]

In making an examination authorized by this chapter, the magistrate issuing the warrant, or the magistrates making the examination, may compel the mother of a bastard, . . or a woman pregnant of a child likely to be born such, to disclose the name of the father of the bastard; or if she refuse to do so, may, by a warrant setting forth the cause thereof, at the expiration of one month from her delivery, if sufficiently recovered, commit her to the county jail, or, in the city of New York, to the city prison of that city, until she disclose the name of the father.[9]

If the father or mother of a bastard, or of a child likely to be born such, abscond from their place of residence, leaving the bastard chargeable, or likely to become chargeable to the public, a superintendent of the poor of the county, or an overseer of the poor or other officer of the alms-house of the town or city where the bastard was born, or is likely to be born, may apply to any two magistrates of the city or county where any property, real or personal, of the father or mother may be, for authority to take the same. Upon due proof of the facts on oath, to the satisfaction of the magistrates, they must issue their warrant, and proceed thereon in the manner provided in title eight of this part, in relation to persons absconding and leaving their children chargeable to the public.[10]

If the mother of any bastard, or of any child likely to be born a bastard, shall be removed, brought or enticed into any county, city or town from any other county, city or town of this state, for the purpose of avoiding the charge of such bastard or child upon the county, city or town from which she shall have been brought or enticed to remove, the same penalties shall be imposed on every such person bringing, removing or enticing such mother

Comm. of Charities v. Vassie, 167 A. D. 74.

6 Crim. P. 851.

7 Crim. P. 852.

8 Crim. P. 853.

9 Crim. P. 856.

10 Crim. P. 860.

to remove, as are provided in the case of the fraudulent removal of a poor person. Such mother, if unable to support herself, shall be supported during her confinement and recovery therefrom, and her child shall be supported, by the county superintendents of the poor of the county where she shall be, if no provision be made by the father of such child.[11]

The mother of every bastard, who shall be unable to support herself, during her confinement and recovery therefrom, and every bastard, after it is born, shall be supported as other poor persons are required to be supported by the provisions of this chapter, at the expense of the city or town where such bastard shall be born, if the mother have a legal settlement in such city or town, and if it be required to support its own poor; if the mother have a settlement in any other city or town of the same county, which is required to support its own poor, then at the expense of such other city or town; in all other cases, they shall be supported at the expense of the county where such bastard shall be born.[12]

The commissioners of public charities of the city of New York, or any two of them, may make such compromise and arrangements with the putative fathers of bastard children in said city, relative to the support of such children, as he shall deem equitable and just, and thereupon may discharge such putative fathers from all further liability for the support of such bastards.[13]

All bastardy proceedings shall be conducted by and in the name of the commissioner, and the amount collected shall be paid to the commissioner, to be by him applied to the support of the child or of the child and its mother, and shall be accounted for by him in a manner approved by the comptroller. The commissioner shall have authority to compromise bastardy and abandonment cases.[14]

If at any time after an order of filiation in bastardy proceedings shall have been made, and an undertaking given thereon, in accordance with the provisions of this act and of the code of criminal procedure such undertaking shall not be complied with, or that for any reason a recovery thereon cannot be had, or if the original undertaking shall have been complied with and the sureties discharged therefrom, or if money were deposited in lieu of bail, and the same shall have been exhausted, and the bastard still needs support, the overseers of the poor of any county, city or town, or the commissioner of public charities, where the bastard, for whose support the order of filiation was made, shall be at the time, may upon proof of the making of the order of filiation, the giving of the above mentioned undertaking, and the noncompliance therewith, or that the sureties have been discharged from their liability, or that for any reason a recovery cannot be had on such undertaking, apply to the court in such county, city or town, having jurisdiction in bastardy proceedings, for a warrant for the arrest of the defendant against whom such order of filiation was made, which shall be executed in the manner provided in the code of criminal procedure for the execution of the warrant; upon the arrest and arraignment of the defendant the said court, upon proof of the making of the order of filiation, the giving of the above mentioned undertaking, and the noncompliance therewith, or that for any reason a recovery cannot be had on such undertaking, shall make an order requiring him to give a new undertaking in the manner provided in subdivision 1 of section 851 of the code of criminal

11 Poor L. 60.
12 Poor L. 62.
13 Poor L. 75.
14 Charter 684.

procedure for giving an undertaking on conviction, or upon his failure to so give a new undertaking, shall commit him in the manner provided in section 852 of said code of criminal procedure.[15]

All illegitimate children whose parents have heretofore intermarried or who shall hereafter intermarry shall thereby become legitimatized and shall become legitimate for all purposes and entitled to all the rights and privileges of legitimate children. . . .[16]

A woman, who, having been convicted of endeavoring to conceal the still-birth of an issue of her body, which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death, is punishable by imprisonment in a state prison not exceeding five years, and not less than two years.[17]

Widows' Pensions for Child Welfare.

Chapter 228 of the Laws of 1915 provides that after July 1st, 1915, there shall be established local boards of child welfare, which in the City of New York shall consist of the commissioner of public charities and eight members to serve without compensation to be appointed by the mayor, which board shall have power to make allowances to dependent mothers for the support of their children under the age of sixteen in order that such children may be suitably cared for in their homes by such mothers. The act provides that the board may in its discretion, when funds have been appropriated therefor, grant an allowance to any dependent widow residing in the county or city wherein she applies for an allowance, and who is deemed by the local board of child welfare to be a proper person mentally, morally and physically to care for and bring up such child or children, provided such widow has been a resident of the county or of the city wherein the application for an allowance is made for a period of two years immediately preceding the application, and whose deceased husband was a citizen of the United States and a resident of the state at the time of his death. Such allowance may be increased, diminished or totally withdrawn in the discretion of the board.

Before granting an allowance the board shall not only determine that the mother is a suitable person to bring up her own children and that aid is necessary to enable her to do so, but further that if such aid is not granted the child or children must be cared for in an institutional home.

Such an allowance or allowances shall not exceed the amount or amounts which it would be necessary to pay to an

15 Charter 691.

16 D. R. L. 24; People v. Connell, 151 A. D. 943.

17 P. L. 2461.

institutional home for the care of such widow's child or children. The application for the allowance may be made directly to the board or any member thereof.

An allowance made by the board shall not be for a longer continuous period than six months without renewal, which allowance may be continued from time to time at same or different amounts, for similar periods or less, either successively or intermittently or may be revoked at the pleasure of the local board of child welfare.

A person who procures or attempts to procure directly or indirectly, any allowance for relief under the act, for or on account of a person not entitled thereto, or knowingly or wilfully pays or permits to be paid any allowance to a person not entitled thereto, is guilty of a misdemeanor.

CHAPTER IV

COMMITMENT AND SENTENCE

Commitment.

. . . Any male person between the ages of sixteen and thirty, who after conviction by any magistrate or any court of or in the city of New York of any charge, offense, misdemeanor or crime, other than a felony, as a first offense, shall in the discretion of such magistrate or court be a proper subject for reformatory treatment, may be committed to the New York City Reformatory for misdemeanants, and . . . the magistrate or court imposing sentence shall not fix or limit the duration thereof, except that no commitment of any male child under the age of sixteen years to any institution for children shall be construed as a first offense under the provisions of this section. The term of such imprisonment of any person so convicted and sentenced shall be terminated by the board of parole of said reformatory as authorized by this act; but such imprisonment shall not exceed the term of three years. The commissioner of corrections of the city of New York, two justices of the court of special sessions, a city magistrate of the first division, a city magistrate of the second division, and four other persons appointed by the mayor, shall constitute the board of parole of the said The New York City Reformatory for misdemeanants. . . . The board of parole of said reformatory shall have the power to parole and discharge any inmate of such institution and shall make rules not inconsistent with law:

1. Prescribing the conditions under which the inmates may be discharged, paroled or conditionally released.

2. Regulating the retaking and reimprisonment of such inmates. . . . Each inmate shall be credited for good personal demeanor, diligence in labor and study, development of character, and for the results accomplished and be charged for dereliction, negligence and offenses. Each inmate's standing in merit and conduct shall be made known to him as often as once in each month. The board of parole shall make rules by which each inmate shall be permitted to see and converse with some member of the board of parole at stated periods. When it appears to the board of parole that there is a strong reasonable probability that any inmate will remain at liberty without violating the law, and that his release is not incompatible with the welfare of society, they shall issue to such inmate an absolute release or discharge from imprisonment. Nothing herein

contained shall be construed to impair the power of the governor to grant a pardon of commutation in any case. If through oversight or otherwise a person be sentenced to imprisonment in the reformatory for a definite period of time, such sentence shall not, for that reason, be void, but the person so sentenced shall be entitled to the benefits and subject to the liabilities of this section, in the same manner and to the same extent as if such sentence had been made for an indefinite period of time in the manner provided by the penal law. If it shall appear to the board of parole that any prisoner confined in the New York City Reformatory for misdemeanants

1. Was at the time of his conviction less than sixteen years of age or more than thirty; or,

2. Has been previously convicted of a crime; or,

3. While in the reformatory is incorrigible and that his presence therein is seriously detrimental to the institution,

An application may be made to a justice of the supreme court of the judicial district in which such reformatory is located for an order directing that said prisoner, if under the age of sixteen years, shall be transferred to the house of refuge under the care of the society for the reformation of juvenile delinquents; or if sixteen years or over transferring said prisoner to the New York City penitentiary. . . . Such justice may grant such order . . . and a prisoner so transferred shall be confined in such institution or prison as under an indeterminate sentence, commencing with his imprisonment in the reformatory with a minimum of six months and a maximum fixed by law for the crime of which the prisoner was convicted and sentenced; and may be released on parole or absolutely discharged as other prisoners confined under an indeterminate sentence. . . . Nothing in this section contained shall be deemed in any manner to change or impair any of the provisions of the penal law or of the code of criminal procedure, the intent of this section being to continue to confide to the discretion of the magistrates and courts of or in the city of New York, the right to commit male persons between the ages of sixteen and thirty, as hereinbefore set forth, to the said reformatory. . . .[1]

Any person committed under the provisions of sections 88 or 89 of this act [see page 11] to an institution other than a city prison, penitentiary, a workhouse or county jail, may be released from such institution before the expiration of the term for which such person was committed, upon the written certificate of the responsible head of such institution setting forth the reasons for such release. No such person shall be so released within six months after commitment without the written consent endorsed upon such certificate of the magistrate making such commitment, or if he be absent, disabled or no longer a magistrate, of the chief city magistrate; and such magistrate instead of consenting to such release may order the said person

[1] I. C. C. A. 93.

to be transferred to any of the institutions named in sections 88 and 89 of this act for the balance of the term or the magistrate may dispose of the case in any of the ways prescribed in said sections. . . .[2]

Whenever it shall appear to the satisfaction of the board of managers of such institution [New York State Training School for Girls], **that any person committed thereto is not of proper age to be so committed, or is not properly committed, or is insane or mentally incapable of being materially benefited by the discipline of such institution, such board of managers shall cause the return of such female to the county from which she was so committed. Such female shall be so returned . . . to the custody of the sheriff of the county from which she was committed. Such sheriff shall take such female before the magistrate making the commitment, or some other magistrate having equal jurisdiction in such county, to be by such magistrate resentenced for the offense for which she was committed to such institution and dealt with in all respects as though she had not been so committed. . . .**[3]

Similar provision for girls improperly committed to Albion or Bedford are to be found in S. C. L. 227.

Male children under the age of sixteen . . . in the counties of New York and Kings shall be committed to the house of refuge in New York City. . . . The courts shall ascertain by such proof as may be in their power, the age of every delinquent committed to . . . such institution, and insert such age in the order of commitment, and the age thus ascertained shall be deemed and taken to be the true age of such delinquent. . . .[4]

A state reformatory for misdemeanants was established for the reformation and the educational, industrial and moral instruction of males under conviction and sentence for commission of misdemeanors and other minor offenses by Chap. 502, L. 1912.

As soon as the said buildings and improvements shall be completely finished . . . any male between the ages of sixteen and twenty-one years inclusive, convicted by any court or magistrate of a misdemeanor, or other minor offense for which he might be sentenced to imprisonment, may be sentenced and committed to the said institution, to be there confined, as herein provided. Such commitments shall not be for a definite term, but any such male at any time after his commitment may be paroled or discharged by the said board of managers, but shall not in any case be detained longer than three years. If through oversight or otherwise any male be sentenced to imprisonment in the said institution for a definite

2 I. C. C. A. 92. 3 S. C. L. 205. 4 S. C. L. 184.

period of time, such sentence shall not for that reason be void, but the person so sentenced shall be entitled to the benefits and subject to the liabilities of this act, in the same manner and to the same extent as if such sentence had been for an indefinite period of time, in the manner herein provided for. Commitments to the said institution shall be as herein provided, anything in the penal law to the contrary notwithstanding. In rendering such sentence, preference may be given to minors, over adults, in view of the limited room in said reformatory of the reception of inmates.[5]

This reformatory has not as yet been established; in fact, it is not yet located.

See also under Disorderly Conduct and Prostitution, pp. 10 to 18.

Commitment of Feeble-minded.

It shall be the duty of a judge of a court of record, on application of a parent, guardian, friend or relative, or of any poor law official, or of any probation or parole officer, or of any superintendent or principal of schools, to set a date for a hearing for the determination of the mental status of any alleged feeble-minded person. Due notice shall be given to parties at interest as to the hearing, the date thereof, and full opportunity shall be given for a presentation of evidence concerning the mental status of the alleged feeble-minded person. When it shall appear to the satisfaction of the court that the individual named in the application is feeble-minded and that it is for the best interests of the individual and of the community that he be committed to a public institution for the feeble-minded, the judge may commit such feeble-minded person to such institution, using such form of commitment as shall be prescribed by the state board of charities, and such person shall be detained therein until duly discharged by direction of the board of managers thereof. Every application for commitment shall be accompanied by the certificate of two medical practitioners, certifying that the person to whom the application relates has been examined by each of them as to his mental capacity and that in their opinion the person is feeble-minded.[1]

Whenever the board of managers or superintendent of any public charitable or custodial asylum or institution for the feeble-minded, idiots or epileptics, shall decide that it is for the best interest of the individual as well as the state that any inmate of such institution should be longer retained therein, such official or board may apply to the judge of a court of record in the district in which the institution is located for the commitment of such individual to such institution. Such application having been made it shall be the duty of the judge

5 Chap. 502, L. 1912. 1 S. C. L. 461.

of such court to name a day for the hearing on such application, and if after due notice to the parents or guardian, and full opportunity has been given for the presentation of evidence by all parties in interest, the judge shall concur in the opinion, he may commit such individual to the care and custody of such institution, and such person shall be detained therein until discharged by direction of the board of managers thereof, using such form of commitment as may be approved for the use of the various institutions by the state board of charities. . . .[2]

For commitment of epileptics see S. C. L. 109 as amended by Chap. 39, Laws 1914, relating to Craig Colony for Epileptics.

For commitment of feeble-minded children see under Children, pages 73, 77.

Sentence.

Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term less than one year, the imprisonment must be inflicted by confinement in the county jail, or place of confinement designated by law to be used as the jail of the county, except when otherwise specially prescribed by statute.[3]

Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term of one year, he may be sentenced to, and the imprisonment may be inflicted by, confinement either in a county jail, or in a penitentiary or state prison. No person shall be sentenced to imprisonment in a state prison for less than one year.[4]

When a male person under the age of twelve years is convicted of a crime amounting to a felony, or where a male person of twelve years and under the age of sixteen years is convicted of a crime, the trial court may, instead of sentencing him to imprisonment in a state prison or in a penitentiary, direct him to be confined in a house of refuge under the provisions of the statute relating thereto. Where the conviction is had and the sentence is inflicted in the first, second, third or ninth judicial district, the place of confinement must be a house of refuge established by the managers of the society for the reformation of juvenile delinquents in the city of New York. . . . Where a male person of the age of sixteen years and under the age of eighteen years has been convicted of juvenile delinquency or of a misdemeanor, the trial court may, instead of sentencing him to imprisonment in a state prison or in a penitentiary, direct him to be confined in a house of refuge established by the managers of the society for the reformation of juvenile delinquents in the city of New York; under the provisions of the statute relating thereto. Where a female person not over the age of twelve years is convicted of a crime

2 S. C. L. 460. 3 P. L. 2181. 4 P. L. 2182.

amounting to felony, or where a female person of the age of twelve years and not over the age of sixteen years is convicted of a crime, the trial court may, instead of sentencing her to imprisonment in a state prison or in a penitentiary, direct her to be confined in the New York State Training School for Girls, under the provisions of the statute relating thereto, but nothing in this section shall affect any of the provisions contained in section 2194.[3]

A male between the ages of sixteen and thirty, convicted of a felony, who has not theretofore been convicted of a crime punishable by imprisonment in a state prison, may, in the discretion of the trial court, be sentenced to imprisonment in the New York state reformatory at Elmira, to be there confined under the provisions of law relating to that reformatory.[4]

Where a male person between the ages of sixteen and twenty-one years is convicted of a felony, or where the term of imprisonment of a male convict for a felony is fixed by the trial court at one year or less, the court may direct the convict to be imprisoned in a county penitentiary, instead of a state prison, or in the county jail located in the county where sentence is imposed. A child of more than seven and less than sixteen years of age, who shall commit any act or omission which, if committed by an adult would be a crime not punishable by death or life imprisonment, shall not be deemed guilty of any crime, but of juvenile delinquency only, but any other person concerned therein, whether as principal or accessory, who otherwise would be punishable as a principal or accessory, shall be punishable as a principal or accessory in the same manner as if such child were over sixteen years of age at the time the crime was committed. Any child charged with any act or omission which may render him guilty of juvenile delinquency shall be dealt with in the same manner as now is or may hereafter be provided in the case of adults charged with the same act or omission except as specially provided heretofore in the case of children under the age of sixteen years.[5]

The court or jury may determine the child's age by personal inspection.[6]

Inasmuch as felonies under this section committed by an infant under sixteen are made misdemeanors, the infant may be tried in the Court of Special Sessions and is not entitled to a jury trial.[7]

Any woman over the age of sixteen years, who shall be convicted of a felony in any of the courts of this state, shall, when the sentence imposed is one year or more, be sentenced to imprisonment in the state prison for women at Auburn. When

3 P. L. 2184.
4 P. L. 2185.
5 P. L. 2186.
6 P. L. 817; People v. Kaminsky, 208 N. Y. 389.
7 People v. Kaminsky, supra.

the sentence imposed is less than one year, she may be committed to the county jail of the county where convicted, or to a penitentiary, or to the state prison for women at Auburn. A woman between the ages of fifteen and thirty, convicted of a felony, who has not theretofore been convicted of a crime punishable by imprisonment in a state prison, may in the discretion of the trial court be sentenced to a house of refuge or reformatory for women, to be there confined under the provisions of law relating to such house of refuge or reformatory.[8]

See also Prison L. 97.

The . . . court may in its discretion suspend sentence, during the good behavior of the person convicted, where the maximum term of imprisonment prescribed by law does not exceed ten years and such person has never been convicted of a felony. Courts of special sessions are empowered to suspend sentence and at any time within the longest period for which a defendant might have been sentenced, may issue process for the re-arrest of the defendant and when arraigned the court as it is then constituted may proceed to enter judgment and impose sentence.

In the case of children under sixteen years of age, at the time of conviction, the longest period of time after suspension of sentence within which a sentence may be imposed for such offense shall be one year; and in any proceeding of a criminal nature, triable before a magistrate, the magistrate upon conviction, may suspend sentence and place the offender under probation and at any time thereafter, during the longest period for which he could have been committed in the first instance, such magistrate, or his successor, if his term has expired, may pronounce any judgment or sentence or impose any fine or other penalty, or make any commitment which might have been pronounced, imposed or made at the time the conviction was had.[9]

A person never before convicted of a crime punishable by imprisonment in a state prison, who is convicted in any court in this state of a felony other than murder first or second degree, and sentenced to a state prison, shall be sentenced thereto under an indeterminate sentence, the minimum of which shall not be less than one year, or in case a minimum is fixed by law, not less than such minimum; otherwise, the minimum of such sentence shall not be more than one-half the longest period and the maximum shall not be more than the longest period fixed by law for which the crime is punishable of which the offender is convicted. The maximum limit of such sentence shall be so fixed as to expire during either of the following months: April, May, June, July, August, September and October.[10]

8 P. L. 2187. 9 P. L. 2188. 10 P. L. 2189.

A person who has been convicted of felony in another state is not entitled to an indeterminate sentence [11] nor is a second offender, even if not indicted as such.[12]

Where a person is convicted of two or more offenses, before sentence has been pronounced upon him for either offense, the imprisonment, to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first or other prior term or terms of imprisonment, to which he is sentenced.

Where a person, under sentence for a felony, afterward commits any other felony, and is thereof convicted and sentenced to another term of imprisonment, the latter term shall not begin until the expiration of all the terms of imprisonment, to which he is already sentenced.[13]

When a crime is declared by any of the provisions of this chapter to be punishable by imprisonment for not more than a specified number of years, the court authorized to pronounce judgment upon conviction may, in its discretion, sentence the offender to imprisonment for any time less than that prescribed by the provisions of this chapter.[14]

When a person under the age of sixteen is convicted of a crime, he may, in the discretion of the court, instead of being sentenced to fine or imprisonment, be placed in charge of any suitable person or institution willing to receive him, and be thereafter, until majority or for a shorter term, subjected to such discipline and control of the person or institution receiving him as a parent or guardian may lawfully exercise over a minor. A child under sixteen years of age, committed for misdemeanor under any provision of this chapter, must be committed to some reformatory, charitable or other institution authorized by law to receive and take charge of minors. And when any such child is committed to an institution it shall, when practicable, be committed to an institution governed by persons of the same religious faith as the parents of such child.[15]

When a person shall be sentenced to imprisonment in a reformatory as prescribed in section 307 of the prison law, the court imposing such sentence shall not fix or limit the duration thereof.[16]

It shall be the duty of every court, police justice, justice of the peace, or other magistrate, by whom any person may be sentenced, in the several counties of this state, for any term not less than sixty days, for any crime or misdemeanor not punishable by imprisonment in the state prison, during the continuance of the agreement mentioned in section 320 of the

11 People v. Becker, 78 Misc. 666.
12 People v. Rosen, 208 N. Y. 169.
13 P. L. 2190.
14 P. L. 2192.
15 P. L. 2194.
16 P. L. 2195.

prison law, to sentence such person to imprisonment in such penitentiary. . . .[17]

All male convicts sentenced to imprisonment in a state prison in the first, second and ninth judicial districts shall be sentenced to the Sing Sing prison. . . .[18]

If the judgment be suspended, after a plea or verdict of guilty or after a verdict against the defendant upon a plea of former conviction or acquittal, the court may pronounce judgment at any time thereafter within the longest period for which the defendant might have been sentenced; but not after the expiration of such period, unless the defendant shall have been convicted of another crime committed during such period.[19]

After a plea of guilty or conviction, in a magistrate's court by or of any defendant, the magistrate may suspend sentence upon such defendant without placing him in the custody or supervision of a probation officer. In any such case, however, the magistrate or any magistrate sitting in the same district may at any time prior to the expiration of one year, revoke such suspension of sentence and issue a warrant for the arrest of such person and may pronounce any judgment upon the defendant which he might have pronounced before suspending sentence.[20]

After a conviction or a plea of guilty the magistrate may remand the defendant for a period not to exceed three days for investigation before pronouncing sentence.[21]

The power to remit a fine imposed by any court, whether of record or not of record, imposed for any criminal offense whatever, shall only be exercised as in this section provided. Any court of record, except an inferior court of local jurisdiction, which has imposed a fine for any criminal offense, or the presiding judge thereof, or any judge authorized to preside therein, shall have power in his discretion, on five days' notice to the district attorney of the county in which such fine was imposed, to remit such fine or any portion thereof. In case of a fine imposed by a court not of record or by any inferior court of local jurisdiction for any criminal offense whatever, the county judge of the county in which the fine was imposed, and in case of a fine imposed by such a court in the city of New York, the court of general sessions, or any judge thereof, upon five days' notice to the district attorney of the county in which such fine was imposed, shall have the same power. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every one dollar of the fine.[22]

17 P. L. 2196.
18 P. L. 2198.
19 Crim. P. 470-a.
20 I. C. C. A. 92-a.
21 I. C. C. A. 98-a.
22 Crim. P. 484.

State Farms.

The establishment of a state farm for the custody, employment and outdoor treatment of female delinquents, was authorized by Chap. 467, L. 1908.

The objects of such farm are to secure a state institution for the detention and security of women convicted and sentenced as hereinafter provided, giving them such industrial occupation as will tend to improve their general, physical, mental and moral welfare; said industrial occupation shall be carried on in the open air as far as possible. . . .

Every woman more than thirty years of age at the time of conviction, who on arraignment, is convicted of a misdemeanor, or of an offense of a lesser character than a misdemeanor and who is not insane and who is known to have been convicted at least five times during the two years immediately preceding such arraignment of any offense whatsoever, may be sentenced and committed to the state farm for women whenever the same may be ready for the reception of inmates. Such sentence and commitment shall not be for a definite term, and any such woman so committed may be paroled or discharged at any time after her commitment by the board of parole of state prisons. No such female shall be detained in such institution longer than three years. In determining whether the requisite numerical total of convictions has been reached in the case of the woman arraigned, it is not necessary that the convictions be all for offenses of one kind, but convictions of different kinds shall be added together. Any court or magistrate authorized to commit any woman to said state farm shall, before so committing her, inquire into and for the purpose of the case determine the age of such woman at the time of such commitment, and her age as so determined, shall be stated in the warrant, and when the year only is stated it shall be considered as expiring on the day on which the warrant is dated, and the statement of the age of such woman so made in the warrant of commitment shall be conclusive evidence as to the age of said woman in any action to recover damages for her detention or imprisonment under said warrant, and shall be presumptive evidence of the age of such woman in any other inquiry, action or proceeding relating to such detention, and shall further immediately notify the warden of said state farm of such commitment, and cause a record to be kept of the name, age, birthplace, occupation, previous commitments, and for what offenses, and last place of residence, of all the women so committed by them, together with the particulars of the offense charged. . . . This act is not to

affect or apply to persons convicted of offenses which require or may require a sentence to a state prison.

In case any woman committed to said state farm shall at the time of such commitment be the mother of a nursing child in her care, and under two years of age, or be pregnant with child, which shall be born after such commitment, such child may accompany its mother and remain in said state farm until such time as in the opinion of the warden and physician said child can properly be removed therefrom and suitably provided for elsewhere.

All women committed to the said state farm shall be employed and occupied in out-of-door work and occupation of a horticultural or agricultural character or dairy work, as far as practicable.

The superintendent of prisons shall make rules for the classification of inmates and for the management of the institution, and the said board of parole shall make rules and regulations governing their parole and discharge. . . .[23]

Although this act became a law May 2d, 1908 and an appropriation authorized, no steps have been taken toward selecting a site or constructing the necessary buildings to carry out the provisions of this wise and important enactment.

Chap. 812 L. 1911 provided for a state industrial farm colony for the detention, humane discipline, instruction and reformation of male adults committed thereto as tramps or vagrants. When it has been established . . . any court or magistrate may commit to the said colony to be there detained under the provisions of this act any male over the age of twenty-one who shall be adjudged by such court or magistrate to be a vagrant or tramp; but no person shall be so committed who shall satisfy the said court or magistrate that he habitually supports himself through lawful employment. It is the intent and meaning of this act that reputable workmen, temporarily out of work and seeking employment, shall not be deemed tramps or vagrants nor be committed as such to the said colony, nor shall any person be committed to the said colony for any other cause than herein provided. Any person who shall be committed to the said colony shall be detained therein according to this act and not otherwise, anything in the penal law to the contrary notwithstanding. Such commitment shall not be for a definite term but any such male, at any time after his commitment, may be paroled or discharged by the said board of managers, and shall not in any case be detained longer than two years and unless he shall

23 Chap. 467, L. 1908.

since reaching the age of sixteen have been previously committed to a penal institution, he shall not be detained longer than eighteen months. If through oversight or otherwise any male be committed to the said colony for a definite period of time, such commitment shall not for that reason be void, but the person so committed shall be entitled to the benefit and subject to the liabilities of this act, in the same manner and to the same extent as if the commitment had been made according to the terms prescribed by this act.

A tract of 820 acres has been acquired at Green Haven, Dutchess County, for this farm colony, but it has not yet been opened for the reception of inmates.

Chap. 700 L. 1911 makes provision for the establishment of a hospital and industrial colony for the care, treatment and occupation of inebriates, and provides that such persons shall be under the control of a Board of Inebriety therein provided for, but as yet no provisions have been made for its establishment.

Chap. 32 L. 1913 authorized the City of New York to acquire a farm site outside the limits of the city for use as part of the New York City Reformatory for Misdemeanants, but as yet nothing has been done to carry this into effect.

Chap. 718 L. 1904 provided for the New York Training School for Boys for the purpose of caring for and training juvenile delinquents under twelve years convicted of felonies and between seven and sixteen years guilty of juvenile delinquency who might otherwise be committed to the House of Refuge on Randall's Island. A farm has been acquired for this purpose at Yorktown Height, Westchester County, but it has not yet been opened for the reception of inmates.

CHAPTER V

PROBATION, PAROLE, PARDON AND MANAGEMENT OF PRISONERS

Probation.

The magistrates of the courts having original jurisdiction of criminal actions in the state, may from time to time appoint a person or persons to perform the duties of probation officer or officers as hereinafter described, within the jurisdiction of the courts of such magistrates and under the direction of such magistrates, to hold such office during the pleasure of the magistrate or magistrates making such appointment and of their successors. Such probation officer or officers may be chosen from among the officers of a society for the prevention of cruelty to children or of any charitable or benevolent institution, society or association now or hereafter duly incorporated under the laws of this state, or be reputable private citizens, male or female. . . .

Every probation officer, when so directed by the court, or by a magistrate of the court, in which he is serving, shall inquire into the antecedents, character and circumstances of any person or persons accused within the jurisdiction of such court, and into the mitigating or aggravating circumstances of the offense of such person, and shall report thereon in writing to such court or magistrate. The term "probationer" shall mean a person placed on probation. It shall be the duty of every probation officer to furnish to all persons placed on probation under his supervision a statement of the period and conditions of their probation and to instruct them concerning the same; to keep informed concerning their conduct and condition; to aid and encourage them by friendly advice and admonition, and by such other measures, not inconsistent with the conditions imposed by the court or magistrate, as may seem most suitable, to bring about improvement in their conduct and condition; to report in writing at least monthly concerning their conduct and condition to the court having jurisdiction over such probationers, or to a magistrate thereof; to keep records of their work; to keep accurate and complete accounts of all moneys collected from probationers, to give receipts therefor and to make at least monthly returns thereof;

to perform such other duties in connection with such probationers as the court or magistrate may direct; and to make such reports to the state probation commission as the commission may require. Any probation officer may act as parole officer for any state penal or reformatory institution when so requested by the authorities thereof, and when requested by the county judge shall act as parole officer over persons released on parole under section 910.

Every probation officer may require such reports by probationers under his care as are reasonable or necessary and not inconsistent with the conditions imposed by the court or magistrate. Every probation officer shall have, as to persons placed on probation under his care, the powers of a peace officer.

When any court suspends sentence and places a defendant on probation it shall determine the conditions and period of probation, which period of probation shall not exceed, in the cases of children, their eighteenth birthday; in the case of any other defendant convicted of an offense less than a felony, two years; and in the case of any other defendant convicted of a felony, five years. The conditions of probation shall be such as the court shall in its discretion prescribe, and may include among other conditions any or several of the following: That the probationer (a) shall indulge in no unlawful, disorderly, injurious or vicious habits; (b) shall avoid places or persons of disreputable or harmful character; (c) shall report to the probation officer as directed by the court or probation officer; (d) shall permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere; (e) shall answer any reasonable inquiries on the part of the probation officer concerning his conduct or condition; (f) shall, if a child of compulsory school age, attend school; (g) shall, if an adult, or if a child but not required to attend school, work faithfully at suitable employment; (h) shall remain or reside within a specified place or locality; (i) shall abstain for a reasonable period from the use of alcoholic beverages, if the use of the same contributed to his offense; (j) shall pay in one or several sums a fine imposed at the time of being placed on probation; (k) shall make reparation or restitution to the aggrieved parties for actual damages or losses caused by his offense; and (l) shall support his wife or children. The court or a magistrate thereof may modify the conditions and the period of probation; may in case of violation of the probationary conditions issue a warrant for the arrest of the probationer; and may at any time discharge the

probationer; and in case of violation of the probationary conditions, the court may impose any penalties which it might have imposed before placing the defendant on probation, provided that, if committed, he be committed to an institution authorized by law to receive commitments for the offense of which he was originally convicted, and of persons of his age at the time of his commitment. If a probationer without permission disappears from oversight, or departs from the jurisdiction of the court, the time during which he keeps his whereabouts hidden or remains away from the jurisdiction of the court may be added to the original period of probation.

A court or magistrate may transfer a probationer from the supervision of one probation officer to that of another probation officer, and such transfer shall be reported by the court or magistrate to both of such probation officers and to the probationer, and a record of the transfer shall be filed with the records of the case. Whenever a probationer resides in a county other than the county in which he has been convicted and placed on probation, or whenever a probationer desires to remove to a county other than that in which he has been placed on probation, and it seems likely that such removal will promote his welfare and will not make him a menace or public charge to such other county, the court placing him on probation, or a magistrate thereof, may transfer him to a salaried probation officer of the city or county to which the probationer is to move, provided such probation officer sends the court or magistrate desiring to make such transfer a written statement that he will exercise supervision over the probationer, and provided such statement is approved in writing by the magistrate of the court to which such probation officer is attached. Such probation officer shall report concerning the conduct and condition of such probationer to the court or magistrate making the transfer.[1]

Where defendant was convicted of petit larceny and paroled to the probation officer for six months on a suspended sentence, his period of parole cannot be extended.[2]

After a plea or verdict of guilty, in a case where a discretion is conferred upon the court as to the extent of the punishment, and where there appears to be circumstances in mitigation of the punishment, the court shall have power, in its discretion, to place the defendant on probation in the manner following:

1. The court upon suspending sentence, may place such per-

1 Crim. P. 11-a. 2 People v. Craig, 79 Misc. 98.

son on probation during such suspension under the charge and supervision of a probation officer. When practicable, any minor child, placed on probation shall be placed with a probation officer of the same religious faith as that of the child's parents. The parents, guardian or master of such child, if the child has any, shall be summoned by the magistrate to attend any examination or trial of such child and to be present in court when the child is placed on probation and informed by the court of the action taken in such case.

2. If the judgment is to pay a fine and that the defendant be imprisoned until it is paid, the court upon imposing sentence may direct that the execution of the sentence of imprisonment be suspended for such period of time, and on such terms and conditions as it shall determine, and shall place such defendant on probation under the charge and supervision of a probation officer during such suspension, provided, however, that upon payment of the fine being made, the judgment shall be satisfied and the probation cease. The court may, upon consent of the defendant and as one of the conditions of suspension of sentence, or on probation, require him while under suspended sentence or on probation to make restitution or reparation to the aggrieved parties in an amount to be fixed by the court, not to exceed the actual losses or damages caused by his offense; or the court may require the defendant while under suspension of sentence or on probation to support his children.

3. Whenever a defendant is placed on probation in the Supreme Court, the court or the justice thereof presiding at the time the defendant is placed on probation, or if the supreme court is not sitting and if such justice is not in the county, any other justice of the supreme court in that district, may, upon the consent of the defendant, enter an order transferring the probationer to the jurisdiction of the county court of the county in which the conviction occurred. The powers and duties of the county court, the county judge and the probation officer under whose supervision the probationer is placed, shall, with respect to such probationer, thereafter be the same as though the probationer were originally placed on probation by such county court, under such probation officer. Whenever a probationer is transferred to the jurisdiction of a county court as hereinabove provided, the supreme court shall transfer to the county court the judgment-roll of the case, or a certified copy thereof.

4. At any time during the probationary period of a person convicted and released on probation in accordance with the

provisions of this section, the court before which, or the justice before whom, the person so convicted was convicted, or his successor, or the court to which the person on probation is transferred as hereinabove provided, may in its or his discretion, revoke and terminate such probation. Upon such revocation and termination, the court may, if the sentence has been suspended, pronounce judgment at any time thereafter within the longest period for which the defendant might have been sentenced, or, if judgment has been pronounced and the execution thereof has been suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect for its unexpired term.[3]

If the judgment be imprisonment, or a fine and imprisonment until it is paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained, until the judgment be complied with. Where, however, the court has suspended sentence or whereafter imposing sentence, the court has suspended the execution thereof and placed the defendant on probation, as provided in section 483 of the code of criminal procedure, the defendant must forthwith be placed under the care and supervision of the probation officer of the court committing him until the expiration of the period of probation and the compliance with the terms and conditions of the sentence or of the suspension thereof. Where, however, the probation has been terminated, as provided in paragraph four of section 483 of the code of criminal procedure, and the suspension of the sentence or of the execution revoked, and the judgment pronounced, the defendant must forthwith be committed to the custody of the proper officer and by him detained until the judgment be complied with.[4] The chief probation officer and probation officers of the court of special sessions in office on the thirtieth day of June, nineteen hundred and fifteen shall continue in office until removed. . . . The majority of the justices of the court of special sessions may from time to time appoint such additional probation officers as the board of aldermen, upon the recommendation of the board of estimate and apportionment, may authorize, and shall appoint the successors of the chief probation officer and probation officers.

The chief probation officer and each of the probation officers of the city magistrates' courts in office on the said day shall be continued in office as probation officers until removed in accordance with the provisions of this act. On or before the

3 Crim. P. 483.
4 Crim. P. 487. (See also I. C. C. A. 97.)

first day of August, nineteen hundred and fifteen, the chief city magistrate shall appoint a chief probation officer of the city magistrates' courts, and from the probation officers then in office shall appoint one or more deputy chief probation officers. The duties of the chief and deputy chief probation officers and of the probation officers shall be prescribed by the chief city magistrate and he shall assign them for service to the courts herein provided for subject to the provisions of this act. No police officer shall be designated or act as a probation officer. The chief justice or the chief city magistrate, as the case may be, or a majority of the justices or a majority of the board of magistrates, may at pleasure remove the chief probation officer or any probation officer. The successors of the chief probation officer, deputy chief probation officers and probation officers of the magistrates' court shall be appointed by the chief city magistrate. The chief city magistrate may from time to time appoint such additional probation officers as the board of aldermen, upon the recommendation of the board of estimate and apportionment, may authorize.[5]

An adult convicted of a misdemeanor may be placed on probation for such time as the court of special sessions may deem proper, not longer, however, than two years. An adult convicted of an offense of which a magistrate has summary jurisdiction may be placed on probation for such time as the magistrate may deem proper, not longer, however, than one year.[6]

A child may be placed on probation for such time as the justice holding the children's court may deem proper, not longer, however, than three years, and such probation period may extend beyond the time such child attains the age of sixteen years. When practicable a child placed on probation shall be placed with a probation officer of the same religious faith as that of the child's parents.[7]

Probation may be revoked at any time within the maximum periods. . . . Upon such revocation, the court, justice or magistrate may make such commitment as could have ordinarily been made if the child or adult had not been placed on probation, and to that end may pronounce any judgment or sentence, or impose any fine, or other penalty, or make any commitment which might have been imposed, or made at the time the conviction was had. Whenever probation is revoked, the court, justice or magistrate, as the case may be, may issue process for the rearrest of the defendant, and . . . may proceed to enter judgment and impose sentence as herein pro-

[5] I. C. C. A. 96. [6] I. C. C. A. 98. [7] I. C. C. A. 99.

vided. . . . Whenever a defendant has been convicted of having abandoned his wife or children without adequate support or leaves them in danger of becoming a burden upon the public, or who neglects to provide for them according to his means, or who threatens to run away and leave his wife and children a burden upon the public, or is convicted of being a relative of a poor person and of sufficient ability to maintain him, her or them, the magistrate . . . may enter an order discontinuing said proceeding and discharge said defendant from probation, imprisonment or cancel any bond or undertaking given therein.[8]

See also under Disorderly Conduct and Prostitution, pp. 10 to 18.

Pardon, Parole and Commutation.

The governor has power to grant reprieves, commutations and pardons, after convictions, for all offenses, . . . upon such conditions, and with such restrictions and limitations, as he may think proper, subject to the regulations provided. . . .[1]

If any person who has been discharged from imprisonment, by virtue of any conditional pardon, or conditional commutation of his sentence, shall violate such condition or neglect to perform it, his pardon or commutation shall be void and he shall be remanded to the place of his former imprisonment and there confined for the unexpired term for which he has been sentenced. . . .[2]

Upon a subsequent conviction for a felony,[3] a judgment of habitual criminality may again be pronounced on account of the first conviction, notwithstanding a former pardon which relieved the defendant from a judgment of habitual criminality.

Every person confined in a state prison, or reformatory, under sentence for a definite term for a felony, and every person confined in a state prison having an indeterminate sentence whose minimum is more than one-half the maximum penalty prescribed for the offense, who has never before been convicted of a crime punishable by imprisonment in a state prison, shall be subject to the jurisdiction of the board of parole for state prisons.[4]

If the agent and warden of the prison from which such prisoner was paroled, or said board or any member thereof, shall have reasonable cause to believe that the prisoner so on parole has violated his parole and has lapsed or is probably

8 I. C. C. A. 100.
1 Crim. P. 692.
2 Crim. P. 696.
3 See P. L. 1022.
4 See generally Prison L. 211 and 211-a.

about to lapse into criminal ways or company, then such agent and warden or said board, or any member thereof, may issue his warrant for the retaking of such prisoner.[5]

If it shall appear to said board of parole that there is reasonable probability that any prisoner so on parole will live and remain at liberty without violating the law, and that his absolute discharge from imprisonment is not incompatible with the welfare of society, then said board shall issue to said prisoner an absolute discharge from imprisonment upon such sentence, which shall be effective therefore.[6]

A sentence to imprisonment in a state prison for a definite fixed period of time is a definite sentence. A sentence to imprisonment in a state prison having minimum and maximum limits fixed by the court is an indeterminate sentence. Every convict confined under a definite sentence in any state prison or penitentiary in this state, on a conviction of a felony or misdemeanor, whether male or female, where the term or terms equal or equals six months, exclusive of any term which may be imposed by the court or by statute as an alternative to the payment of a fine, or a term of life imprisonment, may earn for himself or herself a commutation or diminution of his or her sentence or sentences as follows, namely, five days for each month of a period less than a year, two months for the first year, two months for the second year, four months each for the third and fourth years, and five months for each subsequent year.[7]

Where a convict is held under more than one conviction, the several terms of imprisonment are considered one for the purpose of estimating the amount of commutation to which the prisoner is entitled.[8]

A convict who violates his pardon during the period between the date of his or her discharge by reason of such commutation and the date of the expiration of the full term for which he or she was sentenced, by the commission of any felony, must in addition to the penalty which may be imposed for such felony serve the remainder of the original term without the commutation which he or she would have been compelled to serve but for the commutation of his or her sentence as provided for in this article.[9]

This applies also to prisoners in hospital for insane criminals and convicts in reformatories. (See Prison L. 247 and 248.)

In 1915 a law was enacted [10] providing for a parole commis-

5 Prison L. 215.
6 Prison L. 218.
7 Prison L. 230.
8 See Prison L. 231.
9 See Prison L. 243.
10 Chap. 579, L. 1915.

sion in the City of New York (among other cities of the first class) consisting of the commissioner of correction (who shall be the president of the commission), the police commissioner and three others. It provides that: Any committing magistrate or judge of any court who shall make commitments under indeterminate sentences to a workhouse or a reformatory under the jurisdiction of a department of correction shall be entitled to sit with the parole commission during the consideration of the eligibility for parole of any person by him committed to any such institution under an indeterminate sentence, with authority to vote on such matter. The parole commission shall give notice to each of such committing magistrates or judges, stating the names, offenses, dates of commitment and the recommendations of the parole officers and officers of the department of correction of all inmates committed by him to a workhouse or reformatory under indeterminate sentences whose eligibility for parole is to be considered at the next meeting of the commission.

The act provides that: . . . After the creation of the parole commission any person convicted of any offense punishable by imprisonment in a penitentiary, workhouse, city prison, county jail or other institution under the jurisdiction of the department of correction of said city, who shall not be committed in default of payment of a fine imposed, or for failure to furnish surety or sureties upon a conviction of disorderly conduct tending to a breach of the peace, or for abandonment, and who is not insane or mentally or physically incapable of being substantially benefited by the correctional and reformatory purposes of any such institutions shall, if committed to any institution under the jurisdiction of the department of correction in said city, be sentenced and committed to a penitentiary or a workhouse or a reformatory under the jurisdiction of the said department of correction. The duration of the commitment of any person to the penitentiary shall not be fixed or limited by the court in imposing sentence, except that the term of such imprisonment in the said institution shall not exceed three years, and such imprisonment shall be terminated as prescribed in section five of this act. The duration of the commitment of any person to a workhouse shall be for a definite period not to exceed six months, provided, however, that if it shall become known to the court through competent evidence at any stage of the proceeding prior to the imposition of sentence that any person convicted of vagrancy, disorderly conduct tending to a breach of the peace, public prostitution, soliciting on streets or public places for

the purposes of prostitution, or frequenting disorderly houses, or a house of prostitution, or the violation of section one hundred and fifty of chapter ninety-nine of the laws of nineteen hundred and nine, as amended, has been convicted of any or each of these offenses two or more times during the twenty-four months just previous, or three or more times previous to that conviction, then the court shall commit such offender to a workhouse, of the said department of correction in said city for an indeterminate period which shall not exceed two years. The term of such imprisonment of any person so convicted and sentenced to a workhouse shall be terminated by the parole commission as prescribed in this act. Commitment to reformatories for male misdemeanants under the jurisdiction of a department of correction in any of the cities as aforesaid shall be made in conformity with laws providing for such institutions and commitments thereto. The term of imprisonment of persons so convicted and sentenced to reformatories shall be terminated by the parole commission as prescribed in this act.

§ 5. The parole commission shall have power to parole, conditionally release, discharge, retake or reimprison without reference to the committing magistrate or judge, except as provided in section three of this act, any inmate of any workhouse or reformatory under the jurisdiction of the department of correction in said city, committed thereto under an indeterminate sentence; and to parole, conditionally release, discharge, retake or reimprison any inmate of any penitentiary under the jurisdiction of a department of correction in said cities, committed thereto under an indeterminate sentence, provided the judge who made such commitment to such penitentiary shall, upon recommendation of the parole commission created in pursuance of this act, approve in writing such parole, conditional release or discharge of such inmate. The said commission shall have power to make all necessary rules and regulations not inconsistent with the laws of the state, prescribing the conditions under which eligibility for parole may be determined and under which inmates may be paroled, conditionally released, discharged, retaken and reimprisoned. The said commission shall have full power to compel the attendance of witnesses; to administer oaths; to examine such persons as may be necessary or expedient; to investigate or cause to be investigated the record, health, ability and character previous to commitment and during imprisonment of each inmate committed under an indeterminate sentence to any penitentiary, workhouse or reformatory of the department of

correction in said city. It shall also be the duty of the said commission to facilitate the establishment of a uniform system of records, reports, statistics and memoranda treating of persons charged with or convicted of crimes and offenses punishable by imprisonment in any of the correctional institutions of a department of correction of said city, and to make recommendations from time to time to the courts having criminal jurisdiction therein.

§ 6. The appointment and qualification of the members of the parole commission in any of the cities as aforesaid shall abolish any existing board of parole, body or agent authorized to regulate the parole, discharge or reimprisonment of any person or persons committed under an indeterminate sentence to any institution under the jurisdiction of the department of correction of said city. . . . For the purpose of reformatory and correctional treatment of persons committed to a department of correction in any of said cities, the commissioner of correction of such city shall have power to transfer inmates from any institution of the department to any other institution of the department. . . .

§ 8. Nothing in this act contained shall be construed to prohibit any court of competent jurisdiction from placing on probation, or from suspending sentence upon, any person convicted in that court, as provided by statute.

§ 9. Nothing in this act contained shall be deemed to affect or impair in any manner any provision of the penal laws or of the code of criminal procedure which relates to the sentence, commitment, parole, discharge or reimprisonment of any person committed to any institution other than those institutions specified in this act, the intent of this act being to empower magistrates and courts of or in cities of the first class, in the circumstances hereinbefore specified, to commit persons under indeterminate sentence to penitentiaries, reformatories and workhouses and to extend the reformatory and correctional functions of each and all of such institutions.

Prisoners.

. . . Persons detained as witnesses . . . persons detained for trial and examination . . . shall not be put . . . in the same room with convicts under sentence. Minors shall not be put or kept in the same room with adult prisoners. A woman detained in any county jail or penitentiary upon a criminal charge, or as a convict under sentence, shall not be kept in the same room with a man; and if detained on civil process, or for contempt, or as a witness, she shall not be put or kept in

the same room with a man, except with her husband, in a room in which there are no other prisoners.

The police commissioner shall designate one or more station houses for the detention and confinement of women under arrest in the City of New York. . . .[1]

See also G. C. L. 90.

It shall be the duty of the police commissioner to provide sufficient accommodations for women held under arrest to keep them separate and apart from the cells, corridors and apartments provided for males under arrest, and to so arrange each station house that no communication can be had between the men and women therein confined, except with the consent of the matron or officer in command of said station house. No officer, other than the matron, shall be admitted to the corridor or cells of the women prisoners without the consent of the officer in command of said station house.[2]

See also G. C. L. 94.

Whenever a woman is arrested and taken to a police station, to which a matron is attached, it shall be the duty of the officer in command of the station to cause such matron to be summoned forthwith, and whenever a female is arrested in any precinct to which no matron is attached she shall be taken directly to the station house designated to receive the women prisoners of the precinct in which the arrest is made. . . . The term "woman" . . . shall not include any female either actually or apparently under the age of sixteen years whose care is assumed by any society . . . but every such female shall be taken directly to a station house designated to receive women prisoners and shall be at once transferred therefrom by the officer in charge, to the custody of such society.[3]

See also G. C. L. 95.

In every building used for the purpose of a court of inferior criminal jurisdiction, or part thereof, or for the detention of prisoners, adequate provisions shall be made for the separation of female from male prisoners and of youthful and less hardened offenders from older and more hardened offenders of the same sex, pending the arraignment or trial of such prisoners.[4]

The commissioner of correction shall cause all the criminals and misdemeanants under his charge to be classified, so far as practicable, so that the youthful and less hardened offenders

1 Charter 359.
2 Charter 363.
3 Charter 364.
4 I. C. C. A. 111, 77.

shall not be rendered more depraved by the association with and evil example of older and more hardened offenders. He may establish and maintain such schools or classes for the instruction and training of the inmates of the institution under his charge, as may be authorized by the board of estimate and apportionment. And, to this end, the commissioner may set apart one or more of the penal institutions for the custody of such youthful and less hardened offenders, and he is empowered, in his discretion, to transfer such offenders thereto and from any other of the penal institutions of the city and, when so transferred, to classify them so far as practicable with regard to age, nature of offense, or other fact, and to separate or group such offenders according to such classification, so far as practicable.[5]

. . . So long as any woman is detained or held under arrest in a police station to which a matron is attached it shall be the duty of such matron to remain constantly thereat ready for service; or, if there be more than one matron attached to such station then one of them shall be constantly ready for service. A police matron shall, subject to the officer in charge of such station house, have the immediate care and charge of all women held under arrest in the station to which she is attached, and she may at any time call upon the officer in command of such station for assistance. . . .[6]

See also G. C. L. 93.

At the time of the arraignment and also immediately upon the conviction of a defendant, the magistrate shall inform said defendant that he is entitled to communicate with his relatives or friends by letter or telephone free of charge . . . but the failure of the magistrate to give the warning shall not be deemed to be a reason to reverse a judgment of conviction unless such failure is shown to have deprived the defendant of a fair trial.[7]

See also I. C. C. A. 112.

A person not authorized by law, who visits a prisoner or brings into or conveys from any prison any letter, information, or writing to or from any prison, or conveys to or from any prison, or gives, sells, or furnishes to any prisoner any drug, liquor, or any article prohibited by law, or by the rules of the prison, is guilty of a misdemeanor.[8]

5 C. O. Chap. 7, § 1.
6 Charter 362.
7 I. C. C. A. 81.
8 See P. L. 1691.

Children of Women Convicts.

If any woman committed to any state prison, at the time of such commitment is a mother of a nursing child in her care under one year of age, or if a child shall be born to any woman after such commitment to a state prison such child may accompany its mother to and remain in such institution until it is two years of age, and must then be removed therefrom, unless the term of imprisonment of such woman will expire within two years from the time said child thus reaches two years of age. The agent and warden, superintendent or officer in charge of any state prison, shall cause such child when he attains the age of two years to be placed in an asylum for children in this state or may commit such child to the care and custody of some relative or proper person willing to assume such care. If such woman, at the time of such commitment, shall be the mother of and have under her exclusive care a child more than one year of age, which might otherwise be left without proper care or guardianship, the justice or magistrate committing such woman shall cause such child to be committed to such asylum as may be provided by law for such purposes, or to the care and custody of some relative or proper person willing to assume such care.[1]

S. C. L. 229 provides for similar treatment of children of women committed to Bedford, Albion, etc., and C. L. 92 for similar care of children of women in county jails and penitentiaries. S. C. L. 206 provides for similar treatment of children of females committed to institutions for juvenile delinquents and provides in addition that if a female, when committed, is pregnant with child, the board of managers may, at any time after commitment, place such female in any maternity hospital, or with any proper family in this state, and pay at a reasonable rate for the care and maintenance of such female and such child, if any, until such child becomes two years of age, when the mother must be returned to such institution and the child disposed of as hereinabove provided in the case of a child who remains in the institution until it is two years of age. If a female, when committed, is the mother of a nursing child in her care under one year of age, the board of managers may also cause such mother and child to be placed in the care and custody of a proper person willing to assume such care, and pay therefor a reasonable rate for maintenance and care until the child becomes two years of age, when the mother must be returned to such institution and the child disposed of as hereinabove provided, in the case of a child who remains in the institution until it is two years of age. Said board shall cause the return to the institution of said mother, in either case hereinbefore provided for, before the child becomes two years of age, whenever, in the opinion of said board, the best interests of said mother and child will justify the separation.

1 Prison L. 98.

Arraignment of Prisoners.

Upon the arraignment of a prisoner in any city magistrate's court, other than a night court or a domestic relations court, the city magistrate shall first determine whether the offense was committed within the territorial jurisdiction of that court. If not, he shall refuse to proceed with the hearing and shall forthwith order that the prisoner be arraigned at the city magistrate's court which has territorial jurisdiction. . . .[1]

Whenever a defendant is arraigned before a city magistrate in the city of New York charged with a felony, and the officer having such defendant in charge makes affidavit that he is unable at the time of the arraignment to produce the complainant either by reason of physical injury or disability or owing to temporary absence, or that the evidence is not complete, the city magistrate before whom the said defendant is arraigned may, in his discretion, hold said defendant to bail if the offense be a bailable one, or in default of giving bail commit said defendant to the city prison, for a period not to exceed forty-eight hours from the time of the arraignment before said magistrate or for a longer period by the consent of the defendant. But the city magistrate, in case of personal injury where the complainant is under medical care or is confined to a hospital, may adjourn the hearing in any case from time to time to await the result of such injuries on the affidavit of a regularly licensed physician, or in the case of a hospital on the certificate of a physician of such hospital.[2]

Whenever under any provision of law a child is taken into custody, it shall be the duty of the officer having the child in charge to notify the parent, guardian or custodian of any such child taken into custody, and with all convenient speed to take such child to the children's court, if in session, and if not then to the rooms of a duly incorporated society for the prevention of cruelty to children.[3]

See also under Prisoners, page 110.

1 I. C. C. A. 75.
2 I. C. C. A. 75-a.
3 I. C. C. A. 36.

CHAPTER VI

GENERAL PROVISIONS RELATING TO CRIMES

Definitions.

. . A "felony" is a crime which is or may be punishable by:

1. Death; or,
2. Imprisonment in a state prison.

Any other crime is a "misdemeanor."

A person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a "principal."

A person who, after the commission of a felony, harbors, conceals, or aids the offender, with intent that he may avoid or escape from arrest, trial, conviction, or punishment, having knowledge or reasonable ground to believe that such offender is liable to arrest, has been arrested, is indicted or convicted, or has committed a felony, is an "accessory" to the felony.[1]

Courts.

The courts having original jurisdiction in the City of New York over the crimes treated in this manual are as follows:[2]

1. Supreme Court,
2. County Courts of the counties of Kings, Bronx, Richmond and Queens,
3. Court of General Sessions,
4. Court of Special Sessions,
5. Magistrates Courts.

The *Supreme Court*[3] has jurisdiction to inquire by the intervention of the Grand Jury of all crimes committed or triable in the county, except such minor crimes of which the inferior courts have exclusive jurisdiction, and to try all persons indicted for the same.

[1] P. L. 2. [2] Crim. P. 11. [3] Crim. P. 22.

The *County Courts* [3] in counties other than New York have similar powers and in addition can examine into the circumstances of persons committed to prison as parents of bastards and to discharge them, to review convictions of disorderly persons actually imprisoned, to compel relatives of poor persons to support them.

The *Court of General Sessions* [4] has the same power in New York County that the County Courts have in other counties.

The *Court of Special Sessions* [5] has in the first instance exclusive jurisdiction to hear and determine all charges of misdemeanor committed within the city of New York, except in the instances enumerated below under Magistrates Courts and except where before the commencement of the trial the person has been indicted by a grand jury or a judge of General Sessions or a county judge shall have certified that it is reasonable that such charge shall be prosecuted by indictment. The court has exclusive jurisdiction over bastardy proceedings. All trials in this court are without a jury. All charges of misdemeanor are tried in the county where committed.

The *Magistrates Courts* have only such jurisdiction as is specifically conferred upon them by statute.[6] Their powers are not specifically defined; in all cases where they have jurisdiction over offenses treated in this manual (other than as set forth below) it is so stated under the subject head. Generally speaking, they have no jurisdiction over felonies; they can only hold persons charged with felonies or misdemeanors (other than those below enumerated) for trial in the higher courts. The recent amendments [7] of the Inferior Criminal Court Act provides: A court of special sessions may be held in the city of New York by any one city magistrate where the offense charged is one of the following classes of misdemeanor:

a. Violation of any provision of any code, rule or order enacted or issued by any department, bureau, board or commission of the state or the city of New York.

b. Any misdemeanor enumerated in article sixteen of the penal law entitled "Animals."

c. Any of the misdemeanors enumerated in section nine hundred and twenty-five of the penal law entitled "Frauds on hotel keepers."

d. Any violation of the provisions of section fifteen hundred and sixty-six of the penal code entitled "Street railroad transfer tickets not to be given away or sold."

3 Crim. P. 39.
4 Crim. P. 51.
5 I. C. C. A. 31.
6 Crim. P. 74; I. C. C. A. 72.
7 Ch. 531, L. 1915.

e. Any violation of any provision of the labor law.

f. Any violation of article eleven of the highway law.

g. Any violation of any provision of the tenement house law.

h. Any violation of any ordinance of the city of New York which is punishable as a misdemeanor.

i. Any misdemeanor which is by statute made punishable by fine not exceeding one hundred dollars or by imprisonment for a period not exceeding sixty days, or by both such fine and imprisonment.[8]

Whenever a defendant is arraigned before a city magistrate for an offense which may be tried by a court of special sessions held by a city magistrate, such city magistrate after taking the information and depositions and the statement of the defendant in relation thereto, or his waiver, may, with the consent of the defendant, after informing him of his right to be tried by three justices at the court of special sessions provided for in articles two and three hereof, unless objection is made in behalf of the department in charge of the prosecution for a violation of a code, rule or order of such department, or in any other case by the district attorney, proceed to hold a court of special sessions and try and determine such action upon the information taken by the magistrate and the plea of the defendant taken thereto by such court of special sessions and shall exercise with regard thereto all the powers and jurisdiction of the court of special sessions provided for in articles two and three hereof and may from time to time adjourn such trial. In any case where the magistrate holds a court of special sessions the action shall be tried and finally disposed of by him, or if the department in charge of the prosecution or the district attorney, as the case may be, and the defendant consent, may be tried by a court of special sessions to be held by the next magistrate sitting in the same magistrate's district court or be remitted with the papers to the court of special sessions provided for in articles two and three hereof for trial there by three justices. At any stage of the proceeding before judgment the magistrate may allow the information to be amended in such manner as an indictment might be amended or may take an amended information of the complainant and continue the trial thereon, or he may suspend the trial and cause the complaint and other papers to be sent to the district attorney for trial, upon information, by three justices in the court of special sessions, provided for in articles two and three hereof. If the defendant shall not give such consent, or if the depart-

[8] I. C. C. A. 43.

ment in charge of the prosecution or the district attorney as the case may be shall object as aforesaid at any time before the actual trial by the magistrate in such court of special sessions, the city magistrate shall proceed to examine such case as a magistrate and may, if the evidence warrants, hold such defendant to answer for trial before three justices at the court of special sessions. . . .[9]

Upon request of the chief justice of the court of special sessions, the chief magistrate may assign any city magistrate to act as a justice of the court of special sessions for a period not to exceed three months, and any city magistrate so assigned shall, during the term of such assignment, have all the powers and jurisdiction of a justice of the court of special sessions.[10] The city magistrates have also the same power and jurisdiction to admit to, fix and accept bail before indictment as judges of general session or county judges.[11]

The *Children's Court of the City of New York*[12] has exclusive jurisdiction over all charges against children under the age of sixteen years, of the grade of a misdemeanor, or under § P. L. 2186 [see page 93] permitted to be tried as misdemeanors and all charges against children under sixteen years for which they can be found guilty of juvenile delinquency and all other cases in which the court of special sessions or any city magistrates have power to commit children under sixteen years. This court is a separate division of the court of special sessions[13] from which court five justices shall be assigned.[14] The justice presiding in any part may on the written recommendation of the probation officer in charge of that part dismiss without a hearing[15] any charge against a child over which he has jurisdiction, except when the offense charged would, if committed by a person over sixteen years, be a felony.

Domestic Relations Courts.[16] A special part of the magistrates courts is set apart, in Manhattan for the boroughs of Manhattan and the Bronx and in Brooklyn for the borough of Brooklyn, for the arraignment, examination and trial or to which shall be summoned all persons who abandon their wives and children without adequate support or leave them in danger of becoming a burden upon the public or neglect to provide for them according to their means and all persons compelled by law to support poor relatives. The magistrates are given jurisdiction to summarily try such cases.

9 I. C. C. A. 44.
10 I. C. C. A. 16-a.
11 I. C. C. A. 72-a.
12 I. C. C. A. 34-b, 3; P. L. 487.
13 I. C. C. A. 34-a.
14 I. C. C. A. 34-b.
15 I. C. C. A. 34-t.
16 I. C. C. A. 74.

The Municipal Term[17] of the magistrates court tries all charges of misdemeanor which may be tried by a court of special sessions held by one magistrate for the violation of an ordinance of the city of New York or of the rules and regulations of any department, bureau, board or commission of the city and all such charges for the violation of any statute of the state of New York when the action is prosecuted by or on behalf of any department of the city except the police department, or by or on behalf of the department of labor of the state.[18] The procedure[19] is identical with that described in I. C. C. A. 44 [supra].

Night Courts.[20] A special part of the Magistrates Court is set apart (1) for hearing of cases against men and against men and women charged with offenses arising out of the same transaction and (2) exclusively for hearing of cases against women. These courts are open from 8 P. M. to at least 1 A. M., and all persons arrested except on a charge of felony, after the day courts are closed or at an hour too later to be brought to a day court must be brought to a night court. Any magistrate, pending adjournment of the trial, or after conviction pending investigation before imposition of sentence, may, in his discretion, parole in the custody of the probation officer any female arraigned in any one of the magistrates' courts for any offense other than a felony; or may, subject to release on bail if before conviction, commit her temporarily to such institution for the reception of females as in his judgment is most suitable. But no such commitment shall be for a longer period than four days except with the consent of the defendant.

The Federal Courts have jurisdiction over crimes committed under the White Slave Traffic Act, misuse of mails, etc., and have exclusive jurisdiction over crimes . . .

When committed upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state, or when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state on board any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory or District thereof.

When committed upon any vessel registered, licensed, or enrolled under the laws of the United States, and being upon a voyage on the waters of any of the Great Lakes . . . or

17 I. C. C. A. 95-a.
18 I. C. C. A. 95-b.
19 I. C. C. A. 95-c.
20 I. C. C. A. 77.

any of the waters connecting any of said lakes, or upon the River Saint Lawrence where the same constitutes the international boundary line.

When committed near or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States and by consent of the legislature of the state in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building. . . .[21]

Arrests.

An arrest may be made:
1. By a peace officer under a warrant;
2. By a peace officer without a warrant; or,
3. By a private person.[1]

The following persons are peace officers:[2] sheriffs, under and deputy sheriffs, county detectives, constables, marshals, policemen, officers and agents of all duly incorporated societies for the prevention of cruelty to children and animals.

An arrest[3] may be made at any time of the day or night for a felony; but in cases of misdemeanors the arrest cannot be made on a Sunday or at night unless by direction of the magistrate indorsed upon the warrant.

A peace officer may, without a warrant, arrest a person
1. For a crime, committed or attempted in his presence;
2. When the person arrested has committed a felony, although not in his presence;
3. When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it.[4]
A private person may arrest another:
1. For a crime committed or attempted in his presence;
2. When the person has committed a felony, although not in his presence.[5]

There is no distinction between a peace officer without a warrant and a private person, in respect to arrests for misdemeanors.[6] Except in case of felony, a peace officer can arrest without warrant only for a crime committed or attempted in his presence.[7]

A proceeding under Crim. P. 899 against disorderly per-

21 U. S. P. L. 272.
1 Crim. P. 168.
2 Crim. P. 154; P. L. 196.
3 Crim. P. 170.
4 Crim. P. 177.
5 Crim. P. 183.
6 Gold v. Armer, 140 A. D. 73.
7 People v. Bradley, 58 Misc. 507.

sons must be instituted by complaint and warrant and an officer cannot arrest such person under this section without a warrant.[8]

A person intoxicated in a public place may be arrested without a warrant,[9] but not in a private place;[10] an arrest of a child under sixteen years may be made without a warrant in a place where liquors are sold and drunk.[11]

A peace officer has no right to arrest a common prostitute, without a warrant, unless disorderly conduct is committed in his presence,[12] but he may arrest her if she is sitting at a window soliciting men.[13]

An arrest cannot be made for past misdemeanors by a private person.[14]

A private person before making an arrest must inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the crime, or when he is arrested in pursuit immediately after its commission.[15] He must without delay, take him before a magistrate, or deliver him to a peace officer.[16]

In every case of arrest by any member of the police force, the same shall be made known immediately to the superior on duty in the precinct wherein the arrest was made, by the person making the same; and it shall be the duty of the said superior, within twenty-four hours after such notice, to make written return thereof, according to the rules and regulations of the police department, with the name of the party arrested, the alleged offense, the time and place of arrest, and the place of detention. Each member of the police force, under the penalty of ten days' fine, or dismissal from the force, at the discretion of the police commissioner shall, immediately upon an arrest, convey in person the offender before the nearest sitting magistrate, that he may be dealt with according to law. If the arrest is made during the hours that the magistrate does not regularly hold court, or if the magistrate is not holding court, such offender may be detained in a precinct or station-house thereof, until the next regular public sitting of the magistrate, and no longer, and shall then be conveyed without delay before the magistrate, to be dealt with according to law. And it shall be the duty of the said police commissioner, from time to time, to provide suitable rules and regulations to prevent the undue detention of persons arrested, which rules and regulations shall be as operative and binding as if herein specially enacted, subject, however, to the order of the court committing the person arrested.[17]

Any person who shall, in this state, without due authority, exercise, or attempt to exercise the functions of, or hold himself out to

8 People v. Fuerst, 13 Misc. 304.
9 People v. Brown, 64 Misc. 677.
10 People v. Soloman, 57 Misc. 288.
11 People v. Angie, 74 A. D. 530.
12 People v. Pratt, 22 Hun 300.
13 Harft v. McDonald, 1 City Court Reports 181.
14 People v. Adler, 3 Park. 249.
15 Crim. P. 184.
16 Crim. P. 185.
17 Charter 338.

any one as a deputy sheriff, marshal, or policeman, constable or peace officer, or any public officer, or person pretending to be a public officer, who, unlawfully, under the pretense or color of any process, arrests any person or detains him against his will, or seizes or levies upon any property, . . . is guilty of a misdemeanor.[18] . . .

When one person charges another with a misdemeanor, not committed in the presence of a member of the force, the latter will inform the complainant that the complainant may arrest the person charged, and that he, the member of the force, will thereupon take the prisoner to the station-house provided the complainant accompanies him. If the arrest is made by the complainant, the member of the force will act accordingly. In this case the member of the force upon arriving at the station-house will request the desk officer to record the complainant as having made the arrest, and will also require the complainant to sign the complaint in court.[19]

Upon arriving at the office of the station-house, the arresting officer shall state the charge to the desk officer, who shall enter the prisoner's pedigree and the circumstances of the case in the arrest and aided record. The desk officer shall then cause the prisoner to be searched. A male prisoner shall be searched by the arresting officer in the presence of the desk officer. A female prisoner shall be searched by a matron with all the privacy that circumstances permit.[20]

The desk officer shall not permit the confinement in a cell of a female prisoner with nursing baby. He shall send such female prisoner to the house of detention if practicable, or if not, he shall deliver her into the custody of a matron.[21]

No member of the force shall visit a female prison while prisoners are confined therein except a matron, or, unless accompanied by a matron, and in the latter case only with the knowledge and consent of the commanding officer.[22]

A female arrested within a precinct to which no matron is assigned shall be promptly conveyed to a precinct to which one is assigned.[23]

This and the preceding police department rules were promulgated in accordance with the charter and the provisions of G. C. L. 90 to 96.

SUMMONS.

When a complaint, oral or written, is made to a magistrate and the magistrate believes that in the public interest he should inquire into and investigate the complaint so made, he may, in his discretion, issue a summons. . . .

Upon said summons shall be endorsed the name of the complainant and of the person summoned, and also a brief description of the offense complained of.

A record shall be kept of the issuance and disposition of each summons in such manner as the rules governing the court may provide. . . .

Such summons may be served by the complainant, or by a peace officer, or by any other person designated by the magistrate.

Upon the return of the summons the magistrate shall inquire and investigate into the subject-matter of the complaint and determine whether the case is one in which a warrant should issue.

If the person summoned does not appear, such failure to appear

18 P. L. 1846.
19 P. D. R. 126.
20 P. D. R. 130.
21 P. D. R. 138.
22 P. D. R. 139.
23 P. D. R. 140.

shall constitute contempt, which the magistrate is empowered to punish by a fine of not exceeding twenty-five dollars.

The board of city magistrates in each division of the city is empowered and directed to prepare and issue summons in blank, attested in the name of its chief city magistrate, to members of the police force of and all other peace officers in the city of New York for the purposes stated in sections 83, 84, 85, 86, and 87 of this Act, which summons, when filled in and countersigned by such officer, and served upon the person or persons to whom they are addressed, shall have the same force and effect and shall be obeyed as implicitly, subject to the same penalties for disregard thereof as if individually and directly issued by the chief city magistrate attesting the same.[24]

Attempt to Commit Crime.

An act, done with intent to commit a crime, and tending but failing to effect its commission, is "an attempt to commit that crime." [1]

A person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated, unless the court, in its discretion, discharges the jury and directs the defendant to be tried for the crime itself.[2]

A person who unsuccessfully attempts to commit a crime . . . is punishable by imprisonment for not more than half of the longest term, or by a fine not more than one-half of the largest sum prescribed upon a conviction for the commission of the offense attempted, or by both such fine and imprisonment.[3]

Section 261 does not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.[4]

This section means that if a person has been indicted for an attempt to commit one crime, this does not give him immunity from indictment for another and different crime accomplished in connection therewith and the People may elect for which crime he shall be tried and, if convicted, punished.[5]

Accessories.

A person who commits or participates in an act which would make him an accessory if the crime committed were a felony, is a principal and may be indicted and punished as such, if the crime be a misdemeanor.[6]

A person leasing a house which he knows the lessee is to use for a house of prostitution is guilty as a principal.[7]

24 I. C. C. A. 82.
1 P. L. 2.
2 P. L. 260.
3 P. L. 261.
4 P. L. 262.
5 People v. Pisano, 142 A. D 524.
6 P. L. 27.
7 People v. Erwin, 4 Denio 129.

When an act or omission is declared by statute to be a misdemeanor, and no punishment for aiding or abetting in the doing thereof is expressly prescribed, every person who aids, or abets another in such act or omission is also guilty of a misdemeanor.[8]

An accessory to a felony may be indicted, tried, and convicted, either in the county where he became an accessory, or in the county where the principal felony was committed, and whether the principal felony has or has not been previously convicted, or is or is not amenable to justice, and although the principal has been pardoned or otherwise discharged after conviction.

Except in a case where a different punishment is specially prescribed by law, a person convicted as an accessory to a felony is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both.[9]

Where several persons are indicted together for the same offense, the acquittal of one is no bar to the conviction of the other.[10]

Jurisdiction Over Crimes.

The following persons are liable to punishment within the state:

1. A person who commits within the state any crime, in whole or in part;

2. A person who commits without the state any offense which, if committed within the state, would be larceny under the laws of the state, and is afterwards found, with any of the property stolen or feloniously appropriated within this state;

3. A person who, being without the state, causes, procures, aids, or abets another to commit a crime within the state;

4. A person who, being out of this state, abducts or kidnaps by force or fraud, any person contrary to the laws of the place where such act is committed, and brings, sends or conveys such person within the limits of this state, and is afterwards found therein;

5. A person who, being out of the state and with intent to cause within it a result contrary to the laws of this state does an act which in its natural and usual course results in an act or effect contrary to its laws.[1]

The courts of this state have no jurisdiction over crimes committed in United States Post Offices in New York City,[2] but have over those committed in Brooklyn Navy Yard.[3]

8 P. L. 1936.
9 P. L. 1934.
10 People v. Bassford, 3 N. Y. Cr. 219; aff'd, 102 N. Y. 647.
1 P. L. 1930.
2 People v. Marra, 4 N. Y. Cr. 304.
3 People v. Lane, 1 Edmonds Select Cases, 116.

When a crime is committed, partly in one county and partly in another, or the acts or effects thereof, constituting or requisite to the consummation of the offense, occur in two or more counties, the jurisdiction is in either county.[4]

Where defendant promised in one county to marry the complainant and on the same day went to another county and there seduced her under such promise, he can be tried in the first county for seduction under the promise of marriage.[5]

When a crime is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.[6]

When a crime is committed in this state on board of a vessel navigating a river, lake or canal, or lying therein in the course of her voyage, or in respect to any portion of the cargo or lading of such boat or vessel, the jurisdiction is in any county through which, or any part of which, such river or canal passes, or in which such lake is situated, or on which it borders, or in the county where such voyage terminates, or would terminate if completed.[7]

When a crime is committed in this state, in or on board of any railway engine, train or car, making a passage or trip on or over any railway in this state, or in respect to any portion of the lading or freightage of any such railway train or engine car, the jurisdiction is in any county through which, or any part of which, the railway train or car passes, or has passed in the course of the same passage or trip, or in any county where such passage or trip terminates, or would terminate if completed.[8]

Upon the trial of an indictment, the prisoner may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime.[9]

A person who commits an act without the state which affects persons or property within this state, or the public health, morals, or decency of this state, and which, if committed within this state, would be a crime, is punishable as if the act were committed within this state.[10]

Punishments.

A person who wilfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, for which no other punishment is expressly prescribed by this chapter, is guilty of a misdemeanor. . . .[1]

A person convicted of a crime declared to be a felony, for which no other punishment is specially prescribed by this chapter, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment for not more than seven years, or by a fine of not more than one thousand dollars, or by both.[2]

A person convicted of a crime declared to be a misdemeanor,

4 Crim. P. 134.
5 People v. Crotty, 9 N. Y. Supp. 937.
6 Crim. P. 135.
7 Crim. P. 136.
8 Crim. P. 137.
9 P. L. 610.
10 P. L. 1933.
1 P. L. 43.
2 P. L. 1935.

for which no other punishment is especially prescribed, . . . is punishable by imprisonment in a penitentiary, or county jail, for not more than one year, or by a fine of not more than $500 or by both.[3]

A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied; specifying the extent of the imprisonment, which cannot exceed one day for every one dollar of the fine. The court may require a defendant to pay a fine or restitution, or to make reparation. . . .[4]

The violation of a city ordinance makes the offender liable to a civil action for the recovery of a penalty of $10 unless another penalty is specifically provided.[5]

The violation of a provision of the public health law [6] or the sanitary code makes the offender liable to a civil penalty not to exceed fifty dollars, unless expressly otherwise provided by law.

Limitation of Time.

An indictment for a felony, other than murder, must be found within five years after its commission, except where a less time is prescribed by statute. And an indictment for a misdemeanor must be found within two years after its commission.[7]

If, when the crime is committed, the defendant be out of the state, the indictment may be found within the term herein limited after his coming within the state; and no time during which the defendant is not an inhabitant of, or usually resident within, the state, or usually in personal attendance upon business or employment within the state, is part of the limitation.[8]

Previous Convictions or Acquittals.

When an act charged as a crime is within the jurisdiction of another state, territory or country, as well as within the jurisdiction of this state, a conviction or acquittal thereof in the former, is a bar to a prosecution or indictment therefor in this state.[9]

When a crime is within the jurisdiction of two or more counties of this state, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment thereof in another.[10]

Provisions Affecting Criminals Other than First Offenders.

A person, who, after having been convicted within this state, of a felony, or an attempt to commit a felony, or of petit

3 P. L. 1937.
4 Crim. P. 718.
5 See Crosby C. O., Edition of 1913, page 355.
6 P. H. L. 17.
7 Crim. P. 142.
8 Crim. P. 143.
9 Crim. P. 139.
10 Crim. P. 140.

larceny, or, under the laws of any other state, government, or country, of a crime which, if committed within this state, would be a felony, commits any crime, within this state, is punishable upon conviction of such second offense, as follows:

. . . If the subsequent crime is such that, upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life, then such person must be sentenced to imprisonment for a term not less than the longest term, nor more than twice the longest term, prescribed upon a first conviction.[1]

To punish defendant as second offender, the prior conviction must be alleged in the indictment.[2]

A person who, after having been three times convicted within this state, of felonies or attempts to commit felonies, or under the law of any other state, government or country, of crimes which if committed within this would be felonies, commits a felony within this state, shall be sentenced upon conviction of such fourth, or subsequent, offense to imprisonment in a state prison for the term of his natural life, but after serving a period of time equal to the maximum penalty prescribed for the offense of which he is convicted, less the usual commutation for good conduct, shall become subject to the jurisdiction of the board of commissioners of paroled prisoners, and may be paroled upon such conditions as said board may prescribe, but said board shall not grant an absolute discharge to such prisoner.[3]

When defendant has pleaded guilty to a lesser offense, the penalty prescribed by this section cannot be imposed.[4]

Where a person is hereafter convicted of a felony, who has been, before that conviction, convicted in this state, of any other crime, or where a person is hereafter convicted of a misdemeanor who has been already five times convicted in this state of a misdemeanor, he may be adjudged by the court, in addition to any other punishment inflicted upon him, to be an habitual criminal.[5]

See also Crim. P. 510.

The court may not adjudge defendant an habitual criminal after conviction unless the indictment charged him with being a second offender, though the court may take the fact of his being a second offender into consideration in determining the sentence.[6]

1 P. L. 1941.

2 People v. Price, 6 N. Y. Cr. 141; see also People v. Rosen, 208 N. Y. 169.

3 P. L. 1942.

4 People v. Bretton, 144 A. D. 282.

5 P. L. 1020.

6 People v. Rosen, supra.

The person of an habitual criminal shall be at all times subject to the supervision of every judicial magistrate of the county, and of the supervisors and overseers of the poor of the town where the criminal may be found, to the same extent that a minor is subject to the control of his parent or guardian.[7]

A person who has been adjudged an habitual criminal is liable to arrest summarily with or without warrant, and to punishment as a disorderly person, when he is found without being able to account therefor, to the satisfaction of the court or magistrate, either,

1. In possession of any deadly or dangerous weapon, or of any tool, instrument or material, adapted to, or used by criminals for, the commission of crime; or

2. In any place or situation, under circumstances giving reasonable ground to believe that he is intending or waiting the opportunity to commit some crime.[8]

A person who, having been adjudged an habitual criminal, is charged with a crime committed thereafter, may be described in the complaint, warrant or indictment thereafter, as an habitual criminal; and, upon proof that he has been adjudged to be such, the prosecution may introduce, upon the trial or examination, evidence as to his previous character, in the same manner and to the same extent as if he himself had first given evidence of his character and put the same in issue.[9]

The person and the premises of every one who has been convicted and adjudged an habitual criminal shall be liable at all times to search and examination by any magistrate, sheriff, constable, or other officer, with or without warrant.[10]

For the purpose of indictment and conviction of a second offense, the plea or verdict and suspension of judgment shall be regarded as a conviction, and shall be pleaded according to the fact. The said plea or verdict and suspension of judgment may be proved in like manner as a conviction for the purpose of affecting the weight of the defendant's testimony in any action or proceeding, civil or criminal.[11]

Husband and Wife as Witnesses.

The husband or wife of a person indicted or accused of a crime is in all cases a competent witness, on the examination or trial of such person; but neither husband nor wife can be compelled to disclose a confidential communication, made by one to the other during their marriage.[1]

It is not a defense to a married woman charged with crime, that the alleged criminal act was committed by her in the presence of her husband.[2]

See also Pimps and Panders, page 42.

7 P. L. 1021.
8 Crim. P. 512.
9 Crim. P. 513.
10 Crim. P. 514.
11 Crim. P. 470-b.
1 P. L. 2445.
2 P. L. 1092.

Appeals.

Every person convicted in a criminal proceeding has the right of appeal.

Persons convicted in the Magistrates Courts appeal in the county of New York [1] to the Court of General Sessions, in other counties [2] to the County Courts.

Persons convicted in the Court of Special Sessions,[3] County Courts, Court of General Sessions or in the Supreme Court, appeal to the Appellate Division of the Supreme Court and if such appeal be adverse to the defendant, to the Court of Appeals.

The People have no right of appeal except [4] from a judgment for the defendant on a demurrer to the indictment and from order of the court arresting a judgment rendered.

Extradition for Sex Offenses.

The basis of interstate extradition is the Federal Constitution, but only such crimes are extraditable internationally as are specifically set forth in treaties between the United States and other nations.

The Federal Constitution provides:

"A person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." [5]

In accordance with various Extradition Treaties with the following nations, all persons who have been charged with or sentenced for any of the sex offenses enumerated below can be extradited. Most of the nations, however, reserve the right not to surrender their own citizens, and many treaties provide that the crime committed must constitute such crime in the country from which the person so charged is sought to be extradited.

ARGENTINE:
Abduction, kidnapping, rape.

BELGIUM:
Abortion, bigamy, rape, attempt to commit rape, kidnapping.

BOLIVIA:
Abduction, kidnapping, rape.

1 I. C. C. A. 94.
2 Crim. P. 749.
3 I. C. C. A. 40.
4 Crim. P. 518.
5 Art. IV. Sec. 2.

BRAZIL:
Abduction, abortion, bigamy, kidnapping, rape.

CHILE:
Abduction, kidnapping, rape.

COLOMBIA:
Rape.

CUBA:
Bigamy, kidnapping, rape.

DENMARK:
Abduction, abortion, kidnapping, rape.

DOMINICAN REPUBLIC:
Rape, abortion, carnal knowledge of children under the age of twelve, bigamy, kidnapping, abduction.

ECUADOR:
Rape.

FRANCE:
Rape, abortion, bigamy, child stealing, the abduction of a minor under the age of fourteen for a boy and of sixteen for a girl, kidnapping.

GREAT BRITAIN:
Abduction, abortion, kidnapping, rape.

GUATEMALA:
Bigamy, kidnapping, rape.

HAYTI:
Bigamy, kidnapping, rape.

HONDURAS:
Attempt to commit rape, rape, abortion, carnal knowledge of children under the age of twelve, bigamy.

ITALY:
Kidnapping, rape.

JAPAN:
Rape.

LUXEMBURG:
Abortion, bigamy, rape, attempt to commit rape.

MEXICO:
Bigamy, kidnapping, rape.

NETHERLANDS:
Abortion, bigamy, kidnapping, rape.

NICARAGUA:
Bigamy, kidnapping, rape.

NORWAY:
Abduction, kidnapping, rape.

ORANGE FREE STATE:
Abduction, kidnapping, rape.

OTTOMAN EMPIRE:
Rape.

PANAMA:
Abduction, kidnapping, rape.

PARAGUAY:
Rape, abortion, carnal knowledge of children under the age of twelve, bigamy, kidnapping, abduction.

PERU:
Abduction, bigamy, kidnapping, rape.

PORTUGAL:
Abortion, bigamy, carnal knowledge of children under twelve, kidnapping, rape.

RUSSIA:
Abortion, rape.

SALVADOR:
Rape, abortion, carnal knowledge of children under the age of twelve, bigamy, kidnapping, abduction.

SAN MARINO:
Abortion, bigamy, kidnapping, rape, attempt to commit rape.

SERVIA:
Abduction, kidnapping, rape.

SPAIN:
Abortion, bigamy, carnal knowledge of children under twelve, kidnapping, rape.

SWEDEN:
Abduction, kidnapping, rape.

SWITZERLAND:
Abduction, abortion, bigamy, kidnapping, rape.

URUGUAY:
Abortion, bigamy, kidnapping, rape, abduction.

VENEZUELA:
Rape.

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